

17 - Death Row Population

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2015 Legislative Briefing Book

SOUTH DAKOTA'S DEATH ROW POPULATION

Prepared By
THE OFFICE OF THE ATTORNEY GENERAL

Three inmates currently populate South Dakota's death row – Charles Russell Rhines, Briley Wayne Piper, and Rodney Scott Berget. As described herein, all three were sentenced to death for murders of particular cruelty.

It is prudent for policymakers of any state to periodically examine the wisdom and efficacy of capital punishment. The United States Supreme Court stated in its seminal decision in *Gregg v. Georgia* that “the death penalty undoubtedly is a significant deterrent” to murder. Recently, some states, such as Maryland and Connecticut, made basic value judgments to repeal prospective capital punishment. Other states, such as Illinois, have been forced to abolish capital punishment due to incurable systemic malfunctions in their procedures for determining who should receive society's ultimate punishment.

Fortunately, South Dakota is not plagued by the controversies that have undermined the efficacy or legitimacy of capital punishment in other states. Since the reinstatement of capital punishment in 1979 under guidelines established by the United States Supreme Court:

- South Dakota has no record of condemning innocent persons.
- South Dakota has no record of condemning mentally incompetent persons or juvenile offenders.
- South Dakota's death row is not disproportionately populated by minority members.
- South Dakota has condemned only active participants in first degree, premeditated murders.
- South Dakota's method of execution protocol has been found humane and constitutional by a court of law.

In western states like South Dakota, the public remains firmly in support of capital punishment.

As revealed in the profiles of those who stand condemned in our state, South Dakota's prosecutors, judges and juries have judiciously reserved the penalty of death for our state's worst offenders. These profiles are derived from confession transcripts, witness statements, trial testimony, and other investigative evidence. They are uncensored, graphic, and disturbing – but necessarily so, for to sanitize these crimes would not do their victims justice and would not provide the unflinching perspective needed to judge whether capital punishment remains appropriate as a matter of state policy.

If we could realistically hope that crimes such as these would never occur again in our good state, one might persuasively argue that capital punishment had outlived its usefulness. But since any such hope is illusory, South Dakota must hold the prospect of the penalty of death in reserve for the next Moeller, McVay, Anderson, or Rhines.

It is often said in opposition to capital punishment that taking life to prove the wrongfulness of taking life is itself morally wrong. One could just as forcefully argue that holding as forfeit the life of one who takes life is the ultimate affirmation of a citizen's absolute right to live unmolested in our society. Which side of these competing views of moral justice the State of South Dakota chooses to take belongs to those officials whom the people have elected to make policy.

This office upholds the laws that the people enact. It will continue to vigorously prosecute any person who takes another's life regardless of what penalties the legislature assigns to such crimes. The offenses and the sufferings that are profiled here are evidence that certain offenders so violate the moral rights and dignity of others to warrant the ultimate penalty. It is a penalty the state should retain for the rare instance that South Dakota's citizenry, through its duly appointed juries, determines that moral justice demands a life for a life.

MARTY J. JACKLEY
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2015 Legislative Fact Sheet

CAPITAL SENTENCING COST ANALYSIS SUMMARY

Prepared By
THE OFFICE OF THE ATTORNEY GENERAL

This capital sentencing cost analysis is being provided at the request of the South Dakota Legislature. It is not provided to suggest that the legislature would or should base an important decision of justice on financial considerations alone; rather, it demonstrates that in South Dakota it has not necessarily been our experience that capital punishment intrinsically causes greater, lengthier, or more costly litigation than non-capital cases.

NUMBER OF DEATH ROW INMATES SINCE 1979: 8

AVERAGE COST TO CONDUCT EXECUTION: \$60,525

CURRENT NUMBER OF DEATH ROW INMATES: 3

COST OF LIFE SENTENCES FOR THESE EIGHT INMATES: \$7,531,036

If all eight members of South Dakota's death row population were instead incarcerated for life, the cost would be \$7,531,036. This assumes costs adjusted to 2013 dollars and a lifespan of 73 years for each inmate.

COST MITIGATION EFFECT OF CAPITAL SENTENCES TO DATE: \$3,819,121

Because five members of South Dakota's death row population (Anderson, Page, Robert, Moeller and McVay) have served their capital sentences (Anderson and McVay by his own hand), the cost of incarcerating South Dakota's eight capital inmates has been reduced by \$3,819,121.

PROJECTED COST MITIGATION OF CAPITAL SENTENCES: \$5,021,998

In the event Rhines serves his capital sentence within four years, and Piper and Berget serve theirs within 14 years, the cost of incarcerating South Dakota's death row population will be reduced by \$5,021,998. Thus South Dakota's capital sentencing option stands to reduce the cost of incarcerating South Dakota's eight death row members from \$7,531,036 to \$2,509,038.

TOTAL "CORE" LITIGATION PROCEEDINGS IN CAPITAL CASES: 31

Six core criminal proceedings are available to any criminal defendant whether capital or non-capital: adjudication of guilt, direct appeal, state habeas corpus, appeal from state habeas corpus, federal habeas corpus, and appeal from federal habeas corpus. No defendant can be denied these six core proceedings. South Dakota's eight death row inmates could have taken 48 total core proceedings, yet only 31 have been taken to date.

"EXTRAORDINARY" LITIGATION PROCEEDINGS DUE TO CAPITAL SENTENCES: 6

If "extraordinary" litigation is defined as any proceeding outside the six core proceedings available to inmates which is taken, but which is also unavailing to the inmate, the record reflects that a total of six instances of "extraordinary" litigation have occurred. These six proceedings are attributable to just three of South Dakota's eight death row inmates (Moeller, Rhines, and Berget). Given Moeller's denial of guilt and challenges to his conviction, it is reasonable to conclude that he would have brought his two extraordinary proceedings whether sentenced to death or not. To the extent Moeller challenged the state's execution protocol, experts retained to defend that challenge were also deployed to defend Rhines' challenge, which offset much of the cost of one of Rhines' extraordinary proceedings.

“CORE” LITIGATION PROCEEDINGS AVERTED DUE TO CAPITAL SENTENCES: 18

Because five members of South Dakota’s death row population (Anderson, Page, Robert, Moeller, and McVay) have served their capital sentences (Anderson and McVay by his own hand) without bringing all six core proceedings available to them, the state has been spared the expense of prosecuting 18 core proceedings.

ESTIMATED LITIGATION PROCEEDINGS AVERTED DUE TO PLEAS TO AVOID CAPITAL SENTENCE: 72

At least a dozen first-degree murder defendants have been induced to plead guilty in exchange for a reprieve from facing a death sentence. These pleas have spared the state the expense of the six core proceedings available to these twelve or more defendants (72 total). Thus for every Moeller or Rhines, there are a dozen defendants for whom the prospect of a capital sentence has spared the state the expense of prosecuting core proceedings.

TOTAL LITIGATION PROCEEDINGS AVERTED DUE TO CAPITAL SENTENCES: 90

Combining the 18 instances of core litigation waived by death row inmates with the 72 instances of core litigation averted as a result of pleas entered to avoid a capital sentence nets a total of 90 instances where the imposition of a capital sentence, or the prospect thereof, has spared the state the expense of prosecuting further proceedings. It is reasonable to conclude that the cost mitigation realized by not prosecuting these 90 proceedings exceeds the costs associated with the six instances of “extraordinary” litigation brought by Moeller, Rhines, and Berget.

RATIO OF “EXTRAORDINARY” TO AVERTED LITIGATION: 1:15

For every instance of “extraordinary” litigation brought by an inmate subject to a capital sentence, the state has realized 15 instances of litigation averted by the imposition or prospect of a capital sentence.

RATIO OF “EXTRAORDINARY” CAPITAL TO NON-CAPITAL HABEAS CASES: 1:25

For every instance of “extraordinary” habeas corpus litigation in a capital case brought before the passage of SDCL 21-27-5.1, the state had faced 25 instances of extraordinary habeas corpus litigation in non-capital cases.

SYNOPSIS

Though no data is kept concerning the costs of prosecuting and defending capital cases, it is unlikely that the gross costs of “extraordinary” capital litigation proceedings match or exceed the \$5,021,998 in incarceration cost mitigation realized by the capital sentencing option. It is even more unlikely that the gross costs of “extraordinary” capital litigation proceedings even approach the cost mitigation realized by 90 instances of averted litigation. It is useful to remember that looking simply at the gross cost of, for instance, the Moeller litigation would tend to inflate the “cost” of capital punishment in South Dakota since much of the expense stemmed from the cost of procuring and sustaining his conviction, which costs would have been incurred regardless of whether the prosecution was brought as a capital case.

**MARTY J. JACKLEY
ATTORNEY GENERAL
STATE OF SOUTH DAKOTA**

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CAPITAL SENTENCING COST ANALYSIS

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This capital sentencing cost analysis is being provided at the request of the South Dakota Legislature. It is not provided to suggest that the legislature would or should base an important decision of justice on financial considerations alone; rather, it demonstrates that in South Dakota it has not necessarily been our experience that capital punishment intrinsically causes greater, lengthier, or more costly litigation than non-capital cases.

CURRENT DEATH ROW POPULATION:

Charles Russell Rhines: DOB 7/11/56
Briley Wayne Piper: DOB 3/20/80
Rodney Scott Berget: DOB 5/15/62

DECEASED DEATH ROW INMATES:

Robert Leroy Anderson: DOB 12/4/69
Elijah Page: DOB 12/1/81
Eric Donald Robert: DOB 5/31/62
Donald Eugene Moeller: DOB 8/5/52
James Vernon McVay: DOB 5/9/70

TABLE 1: ANNUAL INMATE HOUSING COST*

*SDDOC Fiscal Year 2013

Average Cost Per SDSP Inmate	
50-59 (+ \$ 3,182)	\$21,455 ¹
60-69 (+ \$ 4,933)	\$24,637
70-79 (+ \$10,287)	\$26,388
	\$31,742

TABLE 2: PROJECTED COST OF INCARCERATION ON A LIFE SENTENCE

(Adjusted to 2013 Dollars - Presumed Life Expectancy of 73 Years²)

	Projected Mortality	Cost Over Time of Ordinary Life Sentence ³	Actual Cost From Incarceration Date to Date of Mortality
Donald Eugene Moeller	2025	\$ 894,678	\$ 530,218
Charles Russell Rhines	2029	\$ 959,043	\$ 959,043
Robert Leroy Anderson	2042	\$1,001,683	\$ 42,910
Elijah Page	2054	\$1,280,868	\$ 150,185
Briley Wayne Piper	2053	\$1,259,413	\$1,259,413
Eric Donald Robert	2035	\$ 658,673	\$ 46,092
Rodney Scott Berget	2035	\$ 658,673	\$ 658,673
James Vernon McVay	2043	\$ 818,204	\$ 65,580
TOTAL		\$7,531,036	\$3,712,114*

* This figure will decrease to \$2,509,237 or less in the event that Rhines serves his capital sentence no later than 4 years hence and Piper and Berget serve theirs no later than 14 years.

¹ SDDOC Correctional Health Data Sheet, Exhibit 1. This figure was calculated by dividing the total annual cost of all penitentiary inmates (inclusive of medical costs) by the total number of inmates. This nets an average cost of \$57.78 per inmate per day inclusive of \$12.65 per day in medical costs. Given the penitentiary age demographics itemized in Exhibit 1, \$12.65 per day medical correlates to a statistical individual 36.3 years of age. To statistically represent individuals older than age 50 who, on average, have higher medical costs than an inmate aged 36.3 years, **TABLE 1** adds the average costs of \$3,182 per annum for inmates between the ages of 50-59, \$4,933 per annum for inmates between the ages of 60-69, and \$10,287 per annum for inmates between the ages of 70-79. It is advisable to remember that these averages do not fully account for catastrophic health events that will inevitably befall individual death row inmates approaching the end of their natural lives, such as open heart surgery or cancer treatment. Thus, utilizing statistical averages to project the cost of an individual death row inmate (whose capital sentence assures that he will end his natural life in prison if not executed) risks significantly understating the ultimate actual cost.

² Mean life expectancy as reported by Rikard, R.V. & Rosenberg, E. (2007). *Aging Inmates: A Convergence of Trends in the American Criminal Justice System*, *Journal of Correctional Health Care* 13(3):150-162 (July 2007), <http://jcx.sagepub.com/content/13/3/150> and Spaulding, A. C. Seals, R. M., McCallum, V. A., Perez, S. D., Brzozowski, A. K. & Steenland, N. K. (2010), *Prisoner Survival Inside and Outside of the Institution: Implications for Health Care Planning*, *American Journal of Epidemiology* (2010) <http://aje.oxfordjournals.org>.

³ SDAG Excel Spreadsheet, Exhibit 2

TABLE 3: COST MITIGATION EFFECT OF CAPITAL SENTENCE BY INMATE

	Deceased	Cost Mitigation Realization
Donald Eugene Moeller	2012	\$ 364,460
Charles Russell Rhines	N/A	N/A
Robert Leroy Anderson	2003 (suicide)	\$ 958,773
Elijah Page	2007	\$ 1,130,683
Briley Wayne Piper	N/A	N/A
Eric Donald Robert	2012	\$ 612,581
Rodney Scott Berget	N/A	N/A
James Vernon McVay	2014	\$ 752,624
TOTAL		\$3,819,121*

* This figure will increase to \$5,021,998 or more in the event that Rhines serves his capital sentence no later than 5 years hence and Piper and Berget serve theirs no later than 15 years.

TABLE 4: COSTS OF CONDUCTING EXECUTION*

*SDDOC Fiscal Year 2012

Elijah Page	2007	\$60,500 (estimate)
Eric Donald Robert	2012	\$60,500
Donald Eugene Moeller	2012	\$60,600

TABLE 5: SUMMARY OF JUDICIAL PROCEEDINGS TAKEN⁴

	Ordinary Due Process	Extraordinary Proceedings*	Available Due Process Not Taken
Donald Eugene Moeller	8	2	0
Charles Russell Rhines	6	3	0
Robert Leroy Anderson	2	0	4
Elijah Page	2	0	4
Briley Wayne Piper	7	0	0
Eric Donald Robert	1	0	5
Rodney Scott Berget	4	1	0
James Vernon McVay	1	0	5
TOTAL	31	6	18

* "Extraordinary" proceedings are those which are not allowed to an inmate as a matter of right and which were proven meritless by rulings adverse to the inmate.

TABLE 6: LITIGATION MITIGATION EFFECT OF POTENTIAL CAPITAL SENTENCE

Michael Nordman (Corrections Officer Ron Johnson, 2011)
Amanda Kaur (Ira Kaur, 2011)
Alexander Salgado (Jasmine Guevara, 2009)
Ethan Johns (Deputy Sherriff Chad Mechels, 2008)
Shane Bell (Bobbi McClure, 2008)
Jessi Owens (David Bauman, 2007)
John Trautman (Stacey Gaikowski, 2006)
Neil Frame (Kristina Moore, 2005)
Jeffery Meyer (Bonnie Meyer, 2001)
Patrick Thielsen (Kelly Ryan, 2001)
Eric Coon (Mary Ross, 1995)
Robert Poppen (Mary Ross, 1995)
Kelly Van Englenhoven (Katie Clarey, 1991)
Daniel Cobb (Stephen Sperlin, 1990)
Wade Aikins (Trooper Oren Hindman, 1985)

⁴ SDAG Spreadsheet, Judicial Proceedings Taken by Death Row Inmates as of 1/1/15, Exhibit 3.

Garland Gregory (Michael Young, 1979)

TABLE 7: COMPARISON OF GUILT/SENTENCING EXPERTS*

	Total Guilt Phase Experts	Total Sentencing Challenge Experts
Donald Eugene Moeller	15	3
Charles Russell Rhines	1	2

* Does not include coroner or crime lab testimony or "affidavit" experts who testified via affidavits at no cost to the state.

TABLE 8: EXTRAORDINARY LITIGATION IN NON-CAPITAL OFFENSES*

Daniel Cobb/1991 First Degree Murder – 10 habeas corpus petitions
Oakley Engesser/2003 Vehicular Homicide – 3 habeas corpus petitions
Thomas Pellegrino/1996 Second Degree Murder – 3 habeas corpus petitions
Troy Haase/1988 Kidnapping and Rape – 3 habeas corpus petitions
James Elmer Smith/1990 First Degree Murder – 2 habeas corpus petitions
Richard Crutchfield/1996 Sex With A Minor – 2 habeas corpus petitions
Roger Krebs/1997 Burglary and Grand Theft – 2 habeas corpus petitions
Kelly Jackson/1988 Aggravated Assault – 2 habeas corpus petitions
Kenneth Muetze/1983 First Degree Murder – 2 habeas corpus petitions
David Lynn Anderson/1995 Vehicular Homicide – 3 habeas corpus petitions
James Douglas Lawrence/2001 Theft By Deception – 2 habeas corpus petitions
Steven West/1998 Sex With A Minor – 3 habeas corpus petitions

* The 2012 legislature enacted SDCL 21-27-5.1 for the purpose of foreclosing successive habeas corpus petitions by both non-capital and capital defendants. Under the new statute, an inmate is limited to a single state habeas corpus petition absent narrow exceptional circumstances required by constitutional due process.

DATA INTERPRETATION

The foregoing data is assembled to test: (1) assumptions that capital punishment inherently produces costly litigation out of proportion to the utility of capital sentences; and (2) the cost justification for retaining or repealing capital punishment in the State of South Dakota.

Summary of Findings

The foregoing data reveals that, historically, capital punishment *per se* is not proven to encourage extraordinary litigation. The data further reflects a cost mitigation effect attributable to the existence of a capital sentencing option in this state. No direct comparison can be made, however, between the cost of prosecuting a capital case and the cost mitigation effect of the state's capital sentencing option because no record of the cost of any individual case is kept. Nor is there any practical formula for separating the non-capital costs of prosecuting or defending a murder case from costs attributable to the capital component. It is possible, nevertheless, to conclude that the litigation and cost mitigation benefits of the capital sentencing option are significantly greater than so-called "wasteful" costs anecdotally associated with defending capital sentences.

Litigation Findings

First, it is necessary to differentiate unavoidable "core" litigation from the "extraordinary" litigation that is often viewed as wasteful and a justification for repealing capital punishment.

Both non-capital and capital defendants have six core judicial proceedings available as a matter of constitutional right and due process:

1. Adjudication of guilt by jury or court trial or a plea.
2. An appeal of the adjudication of guilt and/or sentence to the South Dakota Supreme Court.
3. A petition for a writ of habeas corpus to a South Dakota trial court.
4. A petition to appeal the state trial court's adjudication of the petition for a writ of habeas corpus to the South Dakota Supreme Court.
5. A petition for a writ of habeas corpus to a federal trial court.
6. An appeal of the federal trial court's adjudication of a petition for a writ of habeas corpus to the United States Court of Appeals for the 8th Judicial Circuit.

In addition to these core proceedings, capital defendants can also, as a matter of right, challenge the method of their execution in state or federal court per 42 USC § 1983.

This fact sheet considers any proceedings brought outside of the six "core" proceedings - such as a successive habeas corpus petition or a petition for a writ of certiorari to the United States Supreme Court - to be "extraordinary" if the inmate did not prevail. According to this definition, as shown on **Table 5: Summary Of Judicial Proceedings Taken**, of the 37 total proceedings brought by South Dakota's eight death row inmates, only six proceedings brought by two of those inmates (Moeller, Rhines) can be classified as extraordinary litigation. Given the personalities of these two inmates, it is as likely as not that they would have brought extraordinary challenges to their convictions regardless of whether they had been sentenced to death. Because these six proceedings challenged both the inmate's conviction and sentence, their costs cannot be attributed solely to the imposition of a capital sentence.

As suggested by **TABLE 7: Comparison of Guilt/Sentencing Experts**, Moeller's conviction challenge was more costly than his sentencing challenge because of the number of DNA and other scientific experts required to prove and sustain the circumstantial, albeit conclusive, case against Moeller. To the extent Moeller's sentencing challenge entailed expert testimony, the number of experts was *de minimis* in comparison to the number retained for the guilt phase and the cost per expert substantially less. Also, the state realized cost savings in utilizing its Moeller experts in defending the proceedings that rejected Rhines' sentencing challenge. Thus, costs associated with defending two of the six instances of extraordinary litigation were effectively little more than the cost of a single proceeding.

Rhines is the most litigious of South Dakota's death row population. Moeller is second, followed by Piper and Berget. Rhines is the only death row inmate to date to have filed a second, extraordinary state habeas corpus petition. As shown on **TABLE 8: Extraordinary Litigation In Non-Capital Cases**, the filing of two or more state habeas corpus petitions was not unique to capital cases prior to the passage of SDCL 21-27-5.1 in 2012. With the passage of SDCL 21-27-5.1, inmates are now limited to one state habeas corpus petition absent narrow and extraordinary circumstances. Indeed, the primary impetus behind the passage of SDCL 21-27-5.1 was to foreclose habeas corpus abuse in *non-capital* cases, which occurred at a rate of at least 25 times

the number of successive habeas corpus petitions filed in capital cases. Thus, there is no empirical validation for the assumption that capital sentences intrinsically breed extraordinary habeas corpus litigation.

In fact, in the cases of four of the five inmates listed above under **Deceased Death Row Inmates**, it appears that a capital sentence acted as a disincentive to pursue core or extraordinary litigation of any sort. As shown on the spreadsheet attached as **EXHIBIT 3: Judicial Proceedings Taken By Death Row Inmates As Of 1/1/15**, Anderson and Page each took only their core direct appeal before voluntarily surrendering themselves to their inevitable sentences (Anderson by his own hand). Robert and McVay took no appeals of their convictions or sentences, though an uncontested review of the constitutionality of their sentences by the South Dakota Supreme Court was performed as mandated by statute. By accepting and serving their capital sentences, Anderson, Page, Robert, and McVay cumulatively spared the state from defending 18 core post-conviction proceedings. Thus, these five inmates (Moeller to a lesser extent) contradict the prevailing assumption that death row inmates avail themselves of endless and costly avenues of litigation before they serve their capital sentences. Even assuming that the fact of a capital sentence alone accounted for the six instances of extraordinary litigation brought by Moeller, Rhines, and Berget, those six proceedings are outweighed by 18 instances in which a capital sentence incentivized four other death row inmates to desist in further core proceedings.

In addition to the litigation mitigation effect of a capital sentence among certain death row inmates, the effect is even more noticeable at the pretrial phase of a first-degree murder prosecution. As shown on **TABLE 6: Litigation Mitigation Effect Of Potential Capital Sentence**, more than a dozen first degree murder defendants have entered plea bargains on the condition that the state not seek the death penalty. This is a non-exhaustive list. Thus, for every Moeller or Rhines, there is a dozen or more defendants who entered pleas in order to avoid a capital sentence. Those pleas spared the state a trial and likely five further core proceedings each, or approximately 72 total proceedings.

In sum, the six instances of extraordinary litigation arguably attributable to the imposition of a capital sentence on three litigious death row inmates must be balanced against approximately 90 instances where a capital sentence, or the prospect thereof, has averted further litigation. As discussed below, this litigation mitigation effect translates into substantial cost mitigation for the state.

Cost Findings

The cost mitigation effect of capital sentencing is realized most conspicuously in two ways: (1) core proceedings averted due to the prospect or imposition of a capital sentence as described above; and (2) incarceration cost reductions resulting from inmates who serve their capital sentences.

As respects cost mitigation attributable to averted litigation, this amount cannot be strictly quantified due to the absence of data. It can be said with confidence, however, that the prospective costs of the approximately 90 proceedings averted by the availability of the capital sentencing option would vastly outweigh the actual costs of the six instances of extraordinary capital litigation discussed above.

As respects incarceration cost reductions, as shown on **TABLE 1: Annual Inmate Housing Cost**, the annual cost of incarcerating an inmate is \$21,455. That annual cost increases as shown on the table as the inmate ages. As applied to South Dakota's existing death row population, **TABLE 2: Projected Cost Of Incarceration On A Life Sentence** reveals that the cost of incarcerating this population for the duration of their expected 73 years of life would be \$7,531,036. However, because Moeller, Anderson, Page, Robert, and McVay have served their capital sentences (Anderson and McVay by his own hand), the actual cost of incarcerating this population for life has been reduced to \$3,712,114. The total cost of incarcerating this population would reduce further to \$2,509,238 or less were Rhines to serve his capital sentence within four years and Piper and Berget to serve theirs within 14 years. Thus, as shown by **TABLE 3: Cost Mitigation Effect Of Capital Sentence By Inmate**, the state has or stands to realize a mitigation of incarceration costs of between \$3,819,121 and \$5,021,998 due to the existence and implementation of the state's capital sentencing option. These figures need to be offset against the \$181,600 in costs described in **TABLE 4: Costs Of Conducting Execution**.

A further but unquantified incarceration cost reduction is found in the fact that only a capital sentence permits the state to permanently house its most dangerous inmates in administrative segregation. Rhines, Piper, and McVay each plotted and took steps to kill correctional staff in order to escape. Robert and Berget succeeded in killing a correctional officer in furtherance of an unsuccessful escape plan. Under existing rules of constitutional and state administrative law, non-death row inmates cannot be indefinitely housed in the kind of security setting (administrative segregation) that best protects correctional staff, penitentiary society, or the public at large from the threats posed by Rhines, Piper, and Berget. If not subject to a capital sentence, every 90 days Rhines, Piper, and Berget would be entitled to administratively challenge their administrative segregation and demand return to the general prison population. The penitentiary would incur continual legal and risk assessment costs defending these perpetual challenges.

Again, there is an absence of litigation cost data against which the mitigation of incarceration costs can be compared. However, it can be said with reasonable confidence that the probable cost of extraordinary litigation that is fractionally attributable to the imposition of capital sentences does not match or exceed offsetting reductions in incarceration costs. It can be said with further confidence that the combined cost mitigation effects of (1) averted litigation and (2) incarceration reduction significantly outweigh costs attributable to extraordinary capital litigation.

CONCLUSION

The assembled data reveals that South Dakota's experience with the capital sentencing option has not resulted in cost impacts that exceed cost mitigation effects. Thus, according to the cost analysis, cost considerations alone do not supply justification for repeal of South Dakota's capital sentencing option.

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JUDICIAL PROCEEDINGS TAKEN BY DEATH ROW INMATES AS OF 1/1/15

	Moeller	Rhines	Anderson	Page	Piper	Robert	Berget	McVay	TOTAL
Initial Criminal Trial/Plea	•	•	•	•	•	•	•	•	8/8
Initial Direct Appeal	•	•	•	•	•	•	•	•	6/8
State Habeas Corpus	•	•	•	•	•	•	•	•	3/7
State Habeas Corpus Appeal	•	•	•	•	•	•	•	•	3/7
Federal Habeas Corpus	•	•	•	•	•	•	•	•	2/6
Federal Habeas Corpus Appeal	•	•	•	•	•	•	•	•	2/6
SCOTUS Petition for Certiorari	•*	•	•	•	•	•	•	•	2/8
SCOTUS Appeal	•	•	•	•	•	•	•	•	1/8
Criminal Retrial/Resentencing	•	•	•	•	•	•	•	•	3/8
Second Direct Appeal	•	•	•	•	•	•	•	•	3/8
SCOTUS Petition for Certiorari	•	•*	•	•	•	•	•*	•	1/8
Second State Habeas Corpus	•	•*	•	•	•	•	•	•	2/8
Second State Habeas Corpus Appeal	•	•*	•	•	•	•	•	•	0/8
SCOTUS Petition for Certiorari	•	•	•	•	•	•	•	•	1/8
Second Federal Habeas Corpus Appeal	•	•	•	•	•	•	•	•	1/8
SCOTUS Petition for Certiorari	•	•	•	•	•	•	•	•	1/8
SCOTUS Appeal	•	•	•	•	•	•	•	•	1/8
State Declaratory Judgment Action	•*	•*	•	•	•	•	•	•	1/8
Federal 42 USC § 1983	•*	•*	•	•	•	•	•	•	1/8
TOTAL DUE PROCESS PROCEEDINGS	8	6	2	2	7	1	4	1	31
*TOTAL EXTRAORDINARY PROCEEDINGS ¹	2	3	0	0	0	0	1	0	6
xTOTAL DUE PROCESS PROCEEDINGS NOT TAKEN	0	0	4	4	0	5	0	5	18

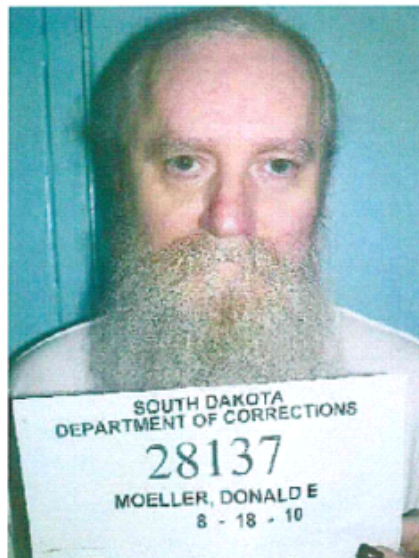
¹ "Extraordinary proceedings" are those which an inmate was not permitted to take as a matter of right and which were proven meritless by rulings adverse to the inmate.

JUDICIAL PROCEEDINGS TAKEN BY DEATH ROW INMATES AS OF 1/1/16

	Moeller	Rhines	Anderson	Page	Piper	Robert	Berget	McVay	TOTAL
Initial Criminal Trial/Plea	•	•	•	•	•	•	•	•	8/8
Initial Direct Appeal	•	•	•	•	•	x	•	x	6/8
State Habeas Corpus	•	•	x	x	•	x	•	x	4/7
State Habeas Corpus Appeal	•	•	x	x	•	x	•	x	3/7
Federal Habeas Corpus	•	•	x	x	•	x	•	x	2/6
Federal Habeas Corpus Appeal	•	•	x	x	•	x	•	x	2/6
SCOTUS Petition for Certiorari	•*	•	x	x	•	x	•	x	2/8
SCOTUS Appeal	•	•	•	•	•	•	•	•	1/8
Criminal Retrial/Resentencing	•	•	•	•	•	•	•	•	3/8
Second Direct Appeal	•	•	•	•	•	•	•	•	3/8
SCOTUS Petition for Certiorari	•	•	•	•	•	•	•	•	1/8
Second State Habeas Corpus	•*	•*	•	•	•	•	•	•	2/8
Second State Habeas Corpus Appeal	•*	•*	•	•	•	•	•	•	0/8
SCOTUS Petition for Certiorari	•	•	•	•	•	•	•	•	1/8
Second Federal Habeas Corpus Appeal	•	•	•	•	•	•	•	•	1/8
SCOTUS Petition for Certiorari	•	•	•	•	•	•	•	•	1/8
SCOTUS Appeal	•	•	•	•	•	•	•	•	1/8
State Declaratory Judgment Action	•*	•*	•	•	•	•	•	•	1/8
Federal 42 USC § 1983	•*	•*	•	•	•	•	•	•	1/8
TOTAL DUE PROCESS PROCEEDINGS	8	6	2	2	7	1	5	1	32
*TOTAL EXTRAORDINARY PROCEEDINGS¹	2	3	0	0	0	0	1	0	6
*TOTAL DUE PROCESS PROCEEDINGS NOT TAKEN	0	0	4	4	0	5	0	5	18

¹ "Extraordinary proceedings" are those which an inmate was not permitted to take as a matter of right and which were proven meritless by rulings adverse to the inmate.

DONALD EUGENE MOELLER



VICTIM/AGE:	Rebecca "Becky" O'Connell - 9
DATE OF CRIME:	May 8, 1990
DATE OF BIRTH:	August 5, 1952 (Deceased)
PRIOR RECORD:	Attempted Rape, Attempted Rape Of A Minor
CAPITAL CONVICTIONS:	Murder, Rape
AGGRAVATING FACTORS:	Torture, Depravity of Mind, Aggravated Battery
DATE OF CONVICTION:	1992
POST-CONVICTION:	Appeal/Conviction Reversed 1996 Retrial 1997 Second Appeal/Conviction Affirmed 2000 State <i>Habeas Corpus</i> 2004 Federal <i>Habeas Corpus</i> 2004 42 USC § 1983 Method of Execution Challenge 2004 Federal <i>Habeas Corpus</i> Appeal 2010 42 USC § 1983 Dismissed 2012
DATE OF EXECUTION:	October 29, 2012

Little is known of the circumstances of Rebecca "Becky" O'Connell's death except what the physical evidence tells because Moeller did not confess to murdering her until the eve of his execution. Moeller's confession did not supply informative detail beyond his bare admission of guilt. What is known is that on May 8, 1990, between the hours of 3:00 p.m. and 4:00 p.m., Donald Moeller's attorney advised him that he should accept a plea bargain on a charge of attempted rape at knifepoint. Because of two prior convictions for attempted rape at knifepoint, Moeller was to be sentenced as an habitual offender for the third attempted rape. As an habitual offender under SDCL ch. 22-7, Moeller faced life imprisonment without parole. Moeller later testified that the prospect of life imprisonment made him feel "bad."

Moeller left his attorney's office and within two hours arrived in the vicinity of two convenience stores where nine-year-old Becky, a bright fourth-grade student, was shopping for candy. Moeller either grabbed Becky or lured her into his pickup. He then drove Becky to a secluded area where he raped her vaginally, then murdered her by repeatedly stabbing her in the neck, shoulder, chest, back, hip, and arms. Becky's arms and hands bore defensive wounds from her futile efforts to fend off Moeller's attack. After he mortally wounded Becky, Moeller anally raped her dead or dying body. Private citizens found Becky's nude body the next morning approximately 400 to 450 feet away from her clothing.

An autopsy showed that Becky died as a result of a cut to her jugular vein in combination with at least two deep slashing cuts across her throat. Each wound would have been independently fatal. Moeller also inflicted deep stab wounds to Becky's chest, shoulder, back, and hip. Examination of the wounds revealed that Moeller repeatedly plunged the entire blade into Becky.

Becky O'Connell's murder followed a long history of sexual assaults by Moeller. In 1973, Moeller carjacked a 21-year-old woman by holding her at knifepoint. He had her drive to a remote cornfield and ordered the victim to remove her clothes. When she refused, Moeller put the knife to her neck and threatened to kill her. She again refused. Moeller instructed her to drive back into town. He got out of the car near her place of work and walked away.

In 1979, Moeller lived in a trailer next door to a 13-year-old male, KM. Moeller struck up a friendship with KM, working on cars together, playing cards. One evening when Moeller was having dinner with KM, he gave him five glasses of wine. He then talked KM into disrobing to his underwear. He tied KM's hands behind his back, lashed a dog chain around his neck, and placed KM on the bed with a jar of Vaseline on the nightstand. When KM resisted sex with Moeller, Moeller put a knife to his neck and said he would kill KM. KM asked Moeller to loosen the dog chain. When Moeller put the knife down to do so, KM jumped off the bed and ran for the door. Moeller grabbed his knife and cut KM twice as he struggled to open the front door. KM lunged against the door, opening it and falling into the snow outside. Moeller wrestled with KM on the snowy ground, but KM escaped.

In 1990, Moeller knocked on a neighbor's door and was invited in. Moeller invited her out to go drinking or dancing but she declined. Moeller left. Later that night, Moeller returned. She again let him in to watch TV together. Once inside, Moeller accosted her with a knife. He ran a knife up and down her body telling her to disrobe or he would cut her. She told him to stop, fearing that her baby might awaken. Moeller said he would cut the child first. She grabbed at the knife, slicing open her hand, and pushed Moeller aside. She ran to her back door and out onto the street where she flagged down a car for help.

CHARLES RUSSELL RHINES



VICTIM/AGE:	Donnivan Schaeffer - 22
DATE OF CRIME:	March 8, 1992
DATE OF BIRTH:	July 11, 1956
PRIOR RECORD:	Burglary Armed Robbery w/ Sawed-Off Shotgun Murder
CAPITAL CONVICTION:	Torture, Killing To Eliminate Witness
AGGRAVATING FACTORS:	Appeal/Conviction Affirmed 1996 US Supreme Court Affirms Conviction 1996 First State <i>Habeas Corpus</i> 1996 Federal <i>Habeas Corpus</i> 2000 Second State <i>Habeas Corpus</i> 2002 US Supreme Court Allows Second State <i>Habeas Corpus</i> 2005 Appeal of Second State <i>Habeas Corpus</i> Denied 2013 Federal <i>Habeas Corpus</i> Pending 2013 Declaratory Judgment Challenge To SDCL 21-27-5.1 Pending
POST-CONVICTION:	
DATE OF EXECUTION:	NA

Rhines formulated a plan to burglarize the Dig'Em Donuts shop in Rapid City to steal money stored in a locked filing cabinet in the store manager's office. Rhines knew the money would be there because he had worked at Dig'Em Donuts as a baker until he had been fired from his job three weeks earlier. On the cold, snowy evening of March 8, 1992, Rhines left an apartment he shared with a Dig'Em Donuts employee named SH to burglarize the store. Around 6:30 p.m., SH drove Rhines to within a few blocks of the Dig'Em Donuts store and dropped him off.

Rhines entered the store's front entrance around 6:40 p.m. using a duplicate of a key issued to him during his employment. For the next 20 minutes, he used a knife to jimmy the lock on the door into the office located in the back of the store. Around 7:05, Rhines heard someone enter the store. That person was Donnivan Schaeffer, a 22-year-old student about to graduate from the South Dakota Vocational-Technical Institute in Rapid City who worked part-time as a courier transporting petty cash and supplies from one of the three Dig'Em Donuts locations to another.

Taken by surprise, Rhines "kind of froze." But after thinking "for a second," Rhines reached into a bag he carried on his shoulder "for a knife," a "Buck 119" hunting knife. Schaeffer turned on lights in the store before he entered the darkened office and appeared as the silhouette of a male form to Rhines. Rhines "stabbed" Schaeffer in the stomach.

Schaeffer fell to the floor, "thrashing around and screaming" in pain and screaming "Charlie." Knowing he had been identified, Rhines "stabbed [Schaeffer] again in the upper left back" with the Buck 119. With that stab to the back, Donnivan stopped screaming. Schaeffer begged for his life, promising "Charlie" he would not tell on him. Schaeffer asked "Charlie" to call him an ambulance. Rhines described himself thinking "Yeah, right, I am going to call you an ambulance. You bet."

Instead of sparing Schaeffer's life, Rhines lifted him to his feet to "walk him into the back room [to] sit him down on [a] pallet" to administer the "*coup de grace*." Donnivan went "rather willingly like he's decided it's time to go. There's no use fightin'." As he makes the walk to his death, Rhines hears air "whistling out of [the stab wound in Donnivan's] back." Next, Rhines:

Sat [Donnivan] down and put him basically, his head between his legs and applied the knife to the back of the neck where the skull joins the spinal column. Right in the joint at the spinal column.

Rhines used the palm of his hand to push the knife:

In kind of upward, up and in. . . . Attempting to reach the small brain to stop his . . . medula . . . [To] stop bodily function.

Schaeffer then "[k]ind of slumped forward" but "he was still breathing." According to Rhines, Schaeffer's hands were involuntarily spasming the way "butchered chickens . . . run around the yard when you lop their heads off." Rhines guessed Donnivan's spasming hands "may have been nerves I don't know. I'm not a trained pathologist."

Perplexed by Schaeffer's spasming after the "*coup de grace*" meant to "stop [his] bodily function," Rhines "didn't know what [he] had." Rhines asked his arresting officers "You guys seen anybody get stabbed to death? Know what it takes? Quit fighting very quickly, but, you don't die very quickly."

Rhines said he tied Schaeffer's hands to stop the spasming and to foreclose the possibility that Schaeffer might "stand up in the middle of - or call anybody and go dial 911." Realizing that a victim with tied hands made him look even worse to the interviewing detectives, Rhines castigated himself for being "stupid" for tying Schaeffer's hands after the death blow.

After executing Schaeffer, Rhines "went back in the office and . . . finished getting what money [he] could find. About \$1,700." Then he "[w]ent over, [and] used the phone" to call SH to come pick him up. In total, Rhines was inside the Dig'Em Donuts store for approximately 40 minutes.

SH drove Rhines home where they "counted the money and then [Rhines] hit [SH] with the news that this \$1,700 had cost the life of Donnivan." SH then left to go to work as scheduled at the very Dig'Em Donuts store where Donnivan's body still lay "slumped forward" in the back room. Rhines took his blood money to get something to eat at "Perkins. Up on LaCrosse [street]. Had an order of french fries."

After Rhines fled Rapid City, SH and his girlfriend, HS, visited him in Seattle. During the visit, Rhines was seen "jokin' around" with SH about how he killed Donnivan, demonstrating to SH how he inflicted the stomach wound. Rhines seemed to relish the experience of having stabbed and killed another person, regaling the interviewing detectives with his insights. "It's surprising how fast [someone] goes down" after being stabbed in the stomach, Rhines said. "There's none of this movie stuff where they stand there and look at you for five minutes and stagger around. They just go down." HS described Rhines using SH to demonstrate how he inflicted Donnivan's mortal wound, saying "See, this is how it happened." Rhines then "had his hand like he was holding a knife and went toward SH kind of in the back part of him, kind of in the neck and shoulder part in the back."

Rhines was eventually apprehended in Seattle and interviewed. The interview transcript revealed Rhines' chilling malice, detachment, and self-satisfaction with the murder. When told that law enforcement's pathologist doubted that Schaeffer's hands would spasm after his spinal cord had been severed, Rhines cackled and countered that it was "Too bad he [the pathologist] was not there. To watch." Rhines then lectured the investigators on how simple it is to look casual after committing a murder: "You stand under a light and you look at your watch. Come on."

As the interview came to a close, Rhines informed investigators that he was confessing because he did not have the money to hire a good enough lawyer to help him "get off." When questioned if he thought getting off would be justice, Rhines scoffed. "Justice," Rhines asked, "for who? If I had \$100,000 for a fancy attorney, I'd walk" like he had "seen guilty men walk. Knowing they were guilty." Rhines lamented that he was "in the predicament of wanting to get off and not having the wherewithal to do so." At the conclusion of the interview, Rhines asked the interviewing detectives for "a last Camel [cigarette] before the night" because he expected it was "gonna be a kind of rough" night for him.

Because he was facing a potential death sentence, Rhines' defense counsel asked him to prepare an "autobiography" for them to assist in preparing a mitigation case. Starting with his young years, Rhines' autobiography described his consistently poor performance as a student. Rhines did not attribute his poor academic performance to an attention or cognitive processing deficit. Instead, Rhines informed his counsel that his poor scholastic performance was due to his boredom with studies and his predilection for rebellion. Rhines considered himself smarter than everyone else around him, and found it beneath his intelligence to "learn at the rate of the slowest child in the class." According to Rhines he was not "stupid or developmentally disabled," he "simply refused to do any of it."

Rhines' autobiography also describes palpable sexual identity confusion during this period of his life. He was "attempting to fit into a society that extolled the traits [he] abhorred." Rhines "went through the motions" of his freshmen year in high school. After he dropped out early in his sophomore year, Rhines joined the military.

Rhines' autobiography certainly does not relate anything mitigating about his military service. Though Rhines tested high on aptitude scoring, he failed to apply himself to military service just as he had failed to apply himself in school. He spent his service years "rebell[ing] against authority" and ingesting large amounts of illegal drugs. Rhines describes the Korean DMZ where he was stationed as a party zone awash in cheap, accessible drugs. Rhines' military service records corroborate Rhines' account.

According to his military file, Rhines "flaunt[ed] authority" and was "apathetic." He was jailed, disciplined, and Article 15ed on numerous occasions for insubordination, drug use, theft of plastic explosives, and assault with a deadly weapon on a fellow service member. The military mustered Rhines out in 1976 four months before the completion of his enlistment.

Rhines' mental status discharge examination found his behavior as "normal," his level of alertness "fully oriented," his level of orientation "fully oriented," his mood "level," his thinking process "clear," his thought content "normal," and his memory "fair." Rhines was found to not have any "significant mental illness" or inability to distinguish right from wrong. Rhines was deemed "to have a lot of suppressed hostility and is quick to anger."

Rhines' post-military, civilian life continued along a path of apathy and lawlessness. Once out of the military, Rhines briefly attended college until he burgled a dorm room in 1977, which netted him seven months in the state penitentiary.

Once out, Rhines secured employment from an excavating contractor, where he was improvidently taught to use dynamite to extract rock layers that could not be removed with mechanical equipment. Rhines' employment ended when he stole some of his employer's dynamite and wired a grain elevator in a neighboring town to explode. Once Rhines' employers got wind of his plan they rushed out to the elevator and unwired the dynamite before Rhines could blow it up.

Then, in 1979, Rhines robbed a Mobridge liquor store at gunpoint with a sawed-off shotgun. Rhines spent the next eight years in the South Dakota and Washington state penitentiaries.

Excerpts from Charles Rhines' Washington State Penitentiary records reflect that:

1. Rhines reported to penitentiary personnel that he was involved in "numerous property crimes as a juvenile, such as theft, breaking and entering, arson, vandalism, *etc.*" Rhines claimed he quit committing juvenile offenses at age 16 because he had come "under suspicion and investigation."
2. Rhines attacked his sister's husband with a log chain.

3. Rhines sawed-off a shotgun for use during his 1979 robbery of a Mobridge liquor store because "the sight of such a weapon 'scares the hell out of' people. Rhines said he committed the robbery for "money and excitement."
4. Rhines was infracted several times for possession of weapons such as an 8" shank made from wire and a 7" icepick made from a sharpened hinge.
5. Rhines was infracted numerous times for insubordination.
6. Penitentiary personnel noted that Rhines "has a temper and can become volatile at times."
7. Rhines attacked an inmate with "a wooden club about 3' " long and 1 ½" thick (a desk leg)." Rhines chased after the inmate yelling "You mother fucking punk!" allegedly because the inmate was trying to intimidate Rhines "into becoming another inmate's 'property' due to his homosexual affiliation."
8. Rhines was avidly interested in technical training in electronics, electrical equipment repair, and computer technology. Rhines was deemed "an intellectually capable individual" who participated in and excelled at "a number of academic and vocational programs." Rhines applied "great energy" to learning about these subjects.
9. Rhines reported that he had "a normal middle-class childhood."
10. Rhines reported that he was discharged from the military "because of his repeated involvement in drugs, disrespect for authority, and general apathetic behavior."
11. Rhines incited disorder among inmates when he refused an order to clear out of an area. He encouraged other inmates to stay in the area while screaming at the guards "I don't have to leave this area, I live here mother fucker, punk, asshole!"
12. Rhines was infracted for ripping institutional bed sheets into strips that he braided into ropes to use as "sex toys" for tying up allegedly consenting sexual partners.
13. Rhines continued to use drugs while incarcerated in violation of institutional rules. At one time, Rhines sought protective custody because he had "built up a drug debt to the 'Skins' for \$150."

Between his release from the penitentiary in 1987 and the murder in 1992, Rhines worked various jobs. Rhines found comparatively steady employment and advancement working for Winchell's Donuts in Seattle, Washington, until he embezzled approximately \$40,000 from the company by forging payroll checks made payable to himself.

During his time in Seattle, Rhines was also engaging in violent, sadomasochistic, homosexual sex with allegedly consenting partners. Rhines outfitted a "black room" or "dungeon" in Seattle by blocking the windows with plywood and painting the entire room in flat black paint. According to Rhines, sadomasochistic sex appeased his inner animal. Rhines' autobiography relates how his animal self is only an inch below the surface. Unlike "urbane/civilized" people, who bury their animal

side “very deep” so that it “never gets out,” Rhines’ animal self exists close to the surface and “must” get out once in a while. “If he is kept suppressed for too long – he takes over.” Rhines described the animal in him as “supremely dominant” during sex, when he is “inflicting pain and suffering as [he] wish[es]” on his sexual partners. “Slapping a guy around/spanking are warm ups” to the “whipping and rape scenes” Rhines performed on his so-called partners during sex. “[W]hen it comes to abusing a guy as he wants it – I’m fairly competent,” Rhines wrote.

Rhines obeyed his animal impulses in Rapid City after he fled Seattle to avoid arrest for his payroll check embezzlement scam. In Rapid City he entered a relationship with AH. Rhines was very domineering and abusive during the relationship. Rhines always liked to be center stage, to be the one in control. He was prone to outbursts of anger. Rhines would physically abuse, push, choke, and assault AH, and control him by saying “he had ways of shutting [AH’s] mouth” or “ways of dealing with [him].”

Rhines’ sexual and violent impulses intersect. In a letter to AH, Rhines described himself as “a sexual predator” whose animal nature prowled just below the surface. This animal wanted to “face-fuck” and “ass fuck” and “grease [someone’s] hole and fuck” at all times. Rhines’ inner animal wanted out “all the time . . . he doesn’t want to be penned up or kept in at all.” In AH’s view, Rhines’ sexual partners were not even people to him.

In his autobiography, Rhines wrote that letting his “raging animal” off its “leash” kept him on an “even keel.” But, according to Rhines, “[a]fter about 18 months of no release,” his animal self “was more than ready to act out. He got his chance March 8, 1992,” when Rhines killed Donnivan Schaeffer.

Since their own client’s autobiography was not very productive, Rhines’ defense counsel sought out possible psychiatric or psychological mitigators. Defense counsel had Rhines examined by Dr. D.J. Kennelly and a team of consulting mental health professionals who prepared a complete psychiatric, psychosocial, and psychological workup on Rhines.

Dr. Kennelly performed a comprehensive evaluation in consultation with a clinical social worker and a psychologist. Dr. Kennelly found that Rhines had no psychotic symptoms, no chronic depression, no thought disorder, no distress related to his homosexuality, no major mental disorder, no inability to use judgment or comprehend his behavior, no impairment of executive power over his behavior, no impairment of judgment, and no inability to rationally and factually understand his legal situation and charges.

Dr. Kennelly’s clinical social worker prepared a psychosocial background report on Rhines. The report imparted much the same information as Rhines wrote in his autobiography. Rhines’ reported that he did poorly in school because he “didn’t apply himself,” not because of any difficulties focusing his attention or thinking things through. Rhines dropped out of high school but eventually obtained a high school diploma while serving in the military. Rhines bombed out of the military in 1976. He underwent a brief period of counseling in 1978 “to facilitate his working through sexual identity problems.” He was convicted of his first felony in 1977 (burglary), his

second in 1979 (armed robbery). Rhines spent most of his years between 1977 and 1987 in prison. He shuffled between different employers between 1987 and 1992 until he was arrested for murder.

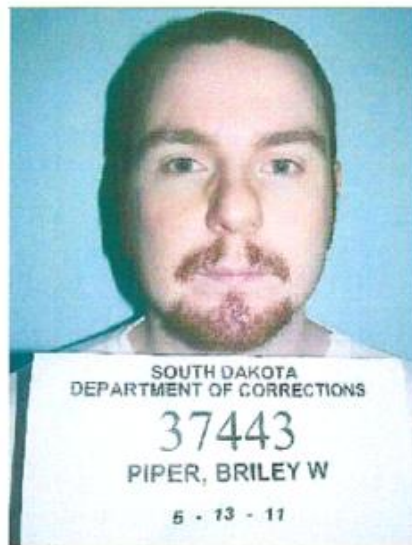
Dr. Kennelly also consulted with Dr. Bill H. Arbes, a psychologist who examined and tested Rhines. Rhines did not fully cooperate with Dr. Arbes. First, Dr. Arbes found Rhines to be an individual of average intellectual ability and not mentally disabled in any way. Second, Dr. Arbes found "no signs of psychotic affiliation or thinking." Though Dr. Arbes felt that Rhines' life was veering toward "cognitive disturbance . . . with regard to emotional and interpersonal matters," he determined that Rhines did not exhibit "signs of disturbance of thought process or thought content." Nevertheless, Dr. Arbes detected "clear signs of a marked underlying personality disorder." Third, Rhines "tended to falsify his responses to the [MMPI] test data," invalidating the test. Based on Rhines' pattern of "random responding" to test questions, Dr. Arbes concluded that Rhines was "falsifying his responses to appear in a more negative light than in fact is the case." Rhines also threw his MCMI testing, but not quite enough to invalidate the test's finding of moderate psychopathology. Finally, Dr. Arbes diagnosed Rhines' principle problems as apathy, insecurity, and introversion. Rhines compensated for his "pervasive inadequacy in most areas" by following "a meaningless, ineffectual, and idle life pattern."

Like his confession, autobiography, and mental status evaluation, RCPD Detective Steve Allender's investigation into Rhines' dissolute life before and after Schaeffer's murder revealed a pattern of pathological lawlessness:

1. At the time of the murder, the 35-year-old Rhines was involved in a homosexual relationship with a minor. Rhines talked openly about his sadomasochism habit, and described one of his homosexual encounters as "a trick." Rhines informed Allender that the knife used to kill Schaeffer was "a toy" from the sadomasochistic "dungeon" he had built in his home in Seattle.
2. Rhines casually admitted to Allender that he supposed he "would have killed somebody" if the gun had accidentally discharged during his 1979 armed robbery.
3. Rhines described how he did not feel bad about embezzling \$40,000 from the Winchell's Donuts Corporation because "[t]here was no violence," "it was a paper scam."
4. When Allender and Seattle police stopped Rhines for questioning, Rhines was in possession of a loaded .30-06 rifle. The stop became tense when Rhines, claiming he wanted to help Allender unload it, tried to wrest the rifle from his hands. Allender refused to relinquish the rifle. Rhines relented, saying "What's the big deal? There are only five rounds in it and there are six of you [police officers]."
5. During his investigation, Allender searched the trash at Rhines' former apartment. Allender found a written 6-step plan to rob Dig'Em Donuts. Rhines wrote out the plan approximately 8 months before the murder. His plan was to rob Dig'Em Donuts and tie up a 14-year-old girl who was working there at the time.

6. Allender also found a plan Rhines wrote to "take out," meaning kill, a woman acquaintance and rob her home and steal her jewelry.
7. Allender interviewed SH, who informed him that Rhines had threatened to kill HS, who was a witness in the murder investigation because Rhines had confessed the murder to her. Rhines wanted her dead because she knew too much. According to SH, Rhines was ready to die by cop. SH also described a burglary scheme Rhines talked about. Rhines planned to test drive cars, have copies of the keys made while out on the test drives, then later steal the cars to commit burglaries of commercial establishments around town. Rhines told SH that he was surprised how "easy" it had been to kill Schaeffer, to commit his "first murder."
8. Allender learned that Rhines was deemed "a spook" in his hometown of McLaughlin, South Dakota. Rhines carried a big knife around town and "intimidated" people. Rhines was known to have wired a nearby grain elevator with dynamite. A classmate from McLaughlin described Rhines as "very smart" and "an overweight, brainy guy."
9. Allender learned that Rhines plotted to escape from custody while being transported to or from a psychiatric evaluation by freeing his hands with a handcuff key fashioned from a paperclip and strangling a guard with a garrote made of braided dental floss. Rhines also commented that a dustpan he was using to clean the unit floor could make a nice weapon to murder someone with for the fun of it. The informing inmate described Rhines as a "spooky individual."
10. Allender interviewed a witness who described Rhines as "bragging" about murdering Schaeffer. According to the witness, Rhines had "no remorse" and acted like the murder was "a fucking big joke."
11. In the days prior to his arrest for the murder of Donnivan Schaeffer, Rhines perpetrated approximately 30 thefts of hundreds of pounds of copper wire from construction sites around Seattle, Washington. Rhines sold the stolen wire to salvage yards. At the time of his arrest, Rhines was wanted in Seattle for burglarizing a warehouse and stealing home furnishings.
12. Rhines told Allender after his arrest that he possessed enough stolen explosives to blow up a police station.

ELIJAH PAGE/BRILEY WAYNE PIPER



VICTIM/AGE:	Allan Poage – 19
DATE OF CRIME:	March 13, 2000
DATE OF BIRTH:	December 1, 1981 (Page – Deceased) March 20, 1980 (Piper)
PRIOR RECORDS:	NA
CAPITAL CONVICTIONS:	Murder, Kidnapping, Robbery, Burglary, Theft
AGGRAVATING FACTORS:	Aggravated Battery, Killing For Money, Killing To Eliminate Witness
POST-CONVICTION:	Appeal/Sentence Review 2006 (Page) Appeal/Sentence Affirmed 2006 (Piper) First State <i>Habeas Corpus</i> /Reversed 2009 (Piper) Resentencing 2011 (Piper) Appeal/Sentence Affirmed 2013 (Piper) Second State <i>Habeas Corpus</i> Pending 2015 (Piper)
DATE OF EXECUTION:	July 11, 2007 (Page)/NA (Piper)

Compared to his dissolute “friends” Elijah Page, Briley Piper, and Darrell Hoadley, Allan Poage was materially well-off. He owned a “nice” three-year-old Chevrolet Blazer with a high-end stereo system, a TV, a Sony PlayStation, a home stereo, and a computer. Piper, Page, and Hoadley wanted these things for themselves. From this naked envy and blind greed, Piper, Page, and Hoadley hatched a plot to rob their friend of his belongings by robbing him of his life.

The plan came to fruition on the bitter cold winter night of March 12-13, 2000. It would be Poage’s last.

On that night, Poage was a tall, slight 19-year-old weighing only 149 pounds. He was living with his mother in Spearfish, South Dakota, while he tried to put some drug-related run-ins with Kansas authorities behind him. Since his father’s death in

1996, Poage had seemed like a "lost soul" to his mother. She was "very close" to her son and tried to help him through the ordinary confusion of his adolescent years and his grief over his father's death.

Though he was working toward an education and a career, Poage's efforts to avoid drugs were not entirely successful. He became involved in the local drug scene with his "friends" Piper, Page, and Hoadley, ages 19, 18, and 20 respectively. Within the group, Piper was the Type A personality, the leader. Page "looked up to" Piper, who was manipulative and could "get anybody to do anything." One of Page's friends tried to get Page to stay away from the "manipulating and conning" Piper. Piper and Hoadley were unemployed and dealing LSD and other drugs for money.

The night he was murdered, Poage gave a friend a ride to work. Piper, Page, and Hoadley came along for the ride. Afterward, the four went to Poage's house where they played video games on Poage's PlayStation. Page and Poage took some opiate-based pain pills early in the evening, but nobody in the group was high that night because they could not find a drug "factory" to sell them stimulating drugs. While at Poage's house, Piper, seeing his friend's material possessions, "had the idea to rob the guy." Piper and Page conceived of a plan to rob the house.

Piper enlisted Hoadley to participate in the plan while the two stood outside Poage's home smoking cigarettes. "We should jack this dude, take his shit," Piper suggested. Hoadley told Piper that "[i]f you guys start something, you know I got your back." Piper and Hoadley discussed how, if they were "gonna try to rip off Allan," then they "couldn't just like, leave him somewhere tied up . . . where [Poage] could like point [them] out." That would not do. "Let's fucking kill [Poage]," Piper suggested.

The trio lured Poage back to a ramshackle Spearfish house where Piper, Page, and Hoadley all lived, did drugs, dealt drugs, and partied. Page then pulled a .22 pistol he had stolen from Poage's house and ordered Poage to "[g]et the fuck on the floor, bitch." From the floor, "flat on his belly," Poage protested. "Why are you doing this," he asked, "[w]hy are you guys doing this?"

Piper told Poage to "[s]hut the fuck up," and "kicked him square straight in the face." Piper's combat boot-clad foot struck Poage's face with such force that it broke out one of his teeth down to the gums, battered his eye bloody, and knocked Poage unconscious. Poage's face "immediately swelled up" as he lay "twitching on the floor."

Piper and Page tied Poage's feet and hands with speaker wire and a dog leash. They propped him up in a chair. After he regained consciousness, Piper and Page openly discussed how they would kill Poage while he sat there listening helplessly. "Man, were gonna fucking kill this dude and take all his shit, dude," Page exclaimed excitedly. "He's got some nice shit up in his house." Poage again asked "What's going on?" Page responded "I just told you what the fuck is going on. I'm taking your shit. I'm jacking you, fool."

With Poage sitting there listening, Piper and Page discussed the best way to kill him. Piper or Page suggested slitting Poage's throat, but ruled that method out because there was already "a fucking shit load of blood" on the floor and they did not want to have to clean up more. The group contemplated other options: "Well, we can either, you know, stab him, or throw him in a mine shaft, or drown him or something."

As he sat there listening to Piper and Page discussing how to kill him, bleeding from his scalp, and spitting up blood, Poage begged his "friends" to spare his life. Page found a knife that "wasn't that sharp" to kill Poage with. "Hey, if you wanna get that sharper, you know, you're gonna have to get a . . . gonna have to get a . . . sharpening thing," Piper told Page. Page said, "I don't got one." "Well you know the bottom of a coffee cup works pretty good," suggested Piper. Page "went and got a coffee cup and started grinding away" at the knife blade while Poage watched.

Poage again implored his "friends" to tell him "[w]hy are you guys doing this?" Page punched him in the face and told him to "shut up."

Page then mixed up a concoction of crushed pills, hydrochloric acid, and stale beer to poison Poage. When Page poured the acid into the beer "it fizzed, it made smoke come right off the top of it." Piper held a tire iron to Poage's feet for ten or fifteen minutes while Page or Hoadley forced the rancid, fuming poison down Poage's throat. It did not kill him. Poage begged his "friends" not to make him drink more because his "stomach hurt." Piper told Poage "[y]ou're going to die tonight."

Piper, Page, and Hoadley decided that it would be best to kill Poage in a remote location. They loaded Poage into his own Chevrolet Blazer. Piper warned Poage "[i]f you try anything I'm going to knock your head to the concrete." Piper drove to a gas station and then to the Higgins Gulch parking lot at the remote trailhead to Crow's Peak. Along the way, Poage begged his "friends" to spare his life. Poage kept asking "[w]hy are you doing this?" Page said, "[y]ou ask me one more time I'm gonna knock you the fuck out." When Poage asked again, Page "elbowed and punched" him. Poage did not ask again after that.

From Higgins Gulch, the nearest house was three miles away. Air temperature that night was around 26° and approximately 12 inches of snow lay on the ground. As Piper attempted to park, the Blazer briefly got stuck in the deep snow.

At Higgins Gulch, Piper, Page, and Hoadley pulled Poage out of the truck. For Page's gratification, they forced Poage to strip to nothing but a tank-top T-shirt and his socks and shoes. Page was "pretty weird like that. He likes . . . he likes guys. He likes naked guys." Page told Hoadley to "bump the music while [Poage] took his clothes off" so he could "enjoy himself" watching Poage strip.

While stripping, Piper and Page threatened Poage with sexual assault. "Suck my dick!" screamed Piper. "You're gonna suck all our dicks." Page told Poage that he was going to summon some mutual acquaintance named Russell to come to the gulch "to rape your ass." Piper laughed out loud at this. By the time Poage's body was found, it was too decomposed to test whether the trio carried out any sexual assault on Poage.

They removed Poage's wallet from his pants. Piper coerced Poage into disclosing his ATM card PIN by threatening to rape and kill his mother and sister after they killed him if he refused. Poage complied.

Piper, Page, and Hoadley marched Poage through fifty feet of "knee-high up" deep snow to the banks of the creek where they pushed him to the ground. There Poage lay "on the ground getting the ever living shit beat out of [him]" by Piper and Page. The group buried Poage in the deep snow "like a friggin' squirrel . . . [a] little rabbit going into his hole" expecting him to quickly die of hypothermia.

When Poage did not oblige them by dying, Piper kicked him further. Piper relished the opportunity to “see what it was like to kill someone” so much that he laughed throughout, and taunted his victim with sarcastic comments like “Ah, that’s gotta hurt” and “Ohh, like, that would suck.” Piper admitted kicking Poage hard with his combat boots but was not “keeping score” of the number of times he kicked him.

While Piper and Page entertained themselves inflicting agonizing pain on Poage, Poage begged them for his life. Poage got up and tried to run away. As he ran, Piper yelled at him to stop “or he was going to have Eli [Page] chase him down.” Page dragged Poage back, now angered that Poage had caused him to get his feet wet in the chase. “Look what you did, asshole,” Page said to Poage, referring to his wet feet. Piper told Poage to “behave.”

Piper attempted to break a branch off of a tree to club Poage with. When that failed, they threw Poage down into the frigid creek waters and “kicked the heck out of him.”

Poage continued begging for his life. “Take anything,” he said, “I’ll give you anything you want, just let me live.” Piper stood on Poage’s neck as Page tried to drown him. This too failed.

Then Piper, Page, and Hoadley took turns stabbing Poage with a pocket knife. Piper stabbed Poage in the head, piercing his skull and penetrating into his brain; Page stabbed Poage in the neck severing part of his jugular vein; Hoadley stabbed Poage in the ear. “That looks like it hurts,” laughed the three of them about the stab wounds they had just inflicted. Poage was “screaming his head off, wailing.” Though Page’s and Piper’s stab wounds were mortal injuries, they failed to kill Poage immediately.

But Poage knew he was killed. “Leave me alone, let me die here alone, just go away,” he said to his tormentors, “I can’t move anyways.” Indeed, by this time Poage was monstrously mutilated. Piper and Page had kicked Poage’s head so badly that they kicked both of his ears clean off and exposed the skull underneath. Poage’s eyeballs were red from internal bleeding and his eye sockets bloodied and swollen; Poage’s broken-out front tooth formed a jagged stump along his gums. A blow to the back of Poage’s head ripped a four-by-six-inch patch of skin from his scalp, exposing the underlying skull. Poage’s brain was bleeding.

Poage asked to return to his Blazer to bleed to death in warmth. “Who’s Blazer,” Page asked, “you mean *my* [Blazer], bitch.” Page kicked Poage again and again, saying “[y]ou need to work on your listening skills. I told you this is my fuckin’ Blazer you fuckin’ punk.” Defeated, Poage asked “[c]an I go up and sit in y’all’s Blazer.” “No,” Page replied, “[w]hat are you stupid? You’re gonna get blood everywhere.”

In a cruel jest, Piper pretended to grant Poage’s request to die in the Blazer on the condition that he first rinsed himself clean of blood in the icy creek. Poage complied. But when he crawled back toward his truck, Piper, Page, and Hoadley grabbed him and beat him further. Piper and Page said “Yeah, like we’re gonna let you go into the fucking Blazer all bloody and shit and getting blood all over our fucking car.”

His hopes of any comfort in his last moments dashed, Poage tried to hold his tormentors to their word to let him die in the Blazer. "You said I could go to the truck if I washed off," Poage said. Page mocked him. "Have I ever lied before?" Page asked the group. Piper or Hoadley reply "Yeah," and "laugh." "Well you know," said Page to Poage, "I'm . . . I'm pretty sure I lie. I don't know, Darryl, do I lie?" Hoadley said "Yeah, I'm pretty sure you do." And Page said "Well I'm not sure, but I think Darryl lies, too. And I'm not real quite sure, but I'm pretty absolutely so fucking positive Piper lies. So you're pretty much screwed."

Piper felt that leading Poage to believe that he could spend his dying moments in the Blazer was "a big joke." Instead of showing even a hint of mercy, Page kicked Poage "over and over and over again." While Poage "wailed" in agony as he was having his life kicked out of him, Page told him "to work on your listening skills. I said shut the fuck up."

Piper went back to the truck to warm himself as Poage lay near death in the creek. Poage was "wailing, just wailing out . . . crying." Page screamed "Shut the fuck up! Somebody's gonna hear you! Shut the fuck up!" and proceeded to kick Poage some more. Poage remained alive.

Page complained that he could not kick Poage further because his feet hurt too much. Hoadley threw rocks at Poage's head. Then he and Page dropped large, bowling ball-sized rocks on Poage's head, crushing his skull. Poage lay half in the creek, immobile.

Hoadley determined that Poage's heart had stopped when "the hole in his throat" stopped "gurgling blood." Poage died half submerged in the creek. According to Piper, the "whole show ended at 3:30" a.m. Poage had survived approaching death for what must have seemed like an eternity as he endured personal humiliation and breathtaking physical abuse at Piper's hands.

"All right, let's get the fuck out of here," Hoadley said. He and Page joined Piper back in the truck. Piper drove the group from Higgins Gulch to Poage's house. Along the way, they each called dibs on items of Poage's property. Hoadley called dibs to the PlayStation. Piper kept Poage's ATM card. Page laid claim to the Blazer.

The trio "ransacked" Poage's mother's home. In addition to Poage's electronics and personal effects, they stole his mother's pocket watch collection, coin collection, heirloom items like her deceased husband's woodworking tools, driver's license and social security card, jewelry, video camera, music CDs, and other "petty items."

The group poured a pile of white drywall powder on the kitchen counter to lead Poage's mother and law enforcement to believe that her son had stolen her property and bolted from town in some drug-fueled fit of rage.

After cleaning out Poage's house, the group drove into Wyoming and then to Missouri to visit Piper's sister, but she turned them away. While wheeling around the west in the stole Blazer, Piper robbed Poage's bank account of money. In Cheyenne, Wyoming, Piper and Hoadley pawned Poage's TV for \$30 or \$40. Piper took a hundred-year-old gold pocket watch to an antique collector shop where Hoadley sold it for \$10. Piper was disappointed in Hoadley's negotiating skills because he "was gonna get like fifty dollars" for the watch. From Missouri they drove to Rapid City where they continued looting Poage's account.

In Rapid City, the group met up with Hoadley's girlfriend, CR, at the mall. Piper bought himself a pair of silver loop earrings. Page left Piper and Hoadley with CR and went to Texas in Poage's Blazer. Piper and Hoadley returned to Spearfish with CR and one of her friends.

Once back in Spearfish, Piper and Hoadley started bragging about the murder. During a car ride with JD and CR, Hoadley and Piper boasted of having killed someone. Poage's belongings – CD changer, PlayStation, video game cartridges, coins, watches – were conspicuously displayed at Piper's home for visitors like JD and CR to see.

Piper and Hoadley reenacted the murder for CR. They described how they kicked Poage and threw the rocks at him. During the reenactment, Piper was "excited" and "laughing." According to CR, "he was really into the story, bragging about it . . . kind of like [he] just wanted to prove like that he's a bad ass." Piper's behavior "made [CR] feel ill, so [she] left the room."

In a "nonchalant," even "cocky," tone, Piper talked openly of killing Poage to steal all the "loot" strewn around the room. To JD, Piper appeared "unremorseful"; murdering Poage "didn't seem to bother" Piper. Piper "didn't seem to really care" as he described to JD how Poage had begged for his life. Piper "acted like [deceiving Poage into believing he could die in the warmth of the Blazer] was funny . . . like he thought that was comical."

Piper's indifference to Poage's murder was consistent with prior conversations with JD, Hoadley, and a woman in which he stated on three separate occasions "he would like to know how it was to kill someone." When Hoadley and Piper were in Oregon prior to coming to Spearfish, Piper talked "nonstop for hours and hours, almost – over a day, about how neat it would be to kill somebody."

On April 22, 2000, a nearby landowner found Poage's body in the creek at Higgins Gulch. He was clothed in nothing but the T-shirt, socks, and shoes he stripped down to before his murder. By then, Piper had fled to his parents' home in Alaska.

After his arrest, Piper continued bragging about his exploits to fellow jail inmates, and also planned his next murder. While in jail in Lawrence County awaiting trial, Piper acted like "the big guy, big tough guy for killing somebody." When recounting his crime to his cell mate Ken Tingley and fellow inmate Thomas Curtis, Piper "didn't seem like he cared" about killing Poage. Piper displayed "no remorse, nothing," according to Curtis. "I mean, almost like someone just took the garbage out and just come back in the house, it was just like he didn't even care."

Piper tried to enlist Curtis in an escape plot to kill two guards on a trip to the jail library and take their keys. Piper's plan called for Curtis to kill a male guard while Piper planned to kill a female guard either by strangling her from behind or stabbing a pencil into her throat.

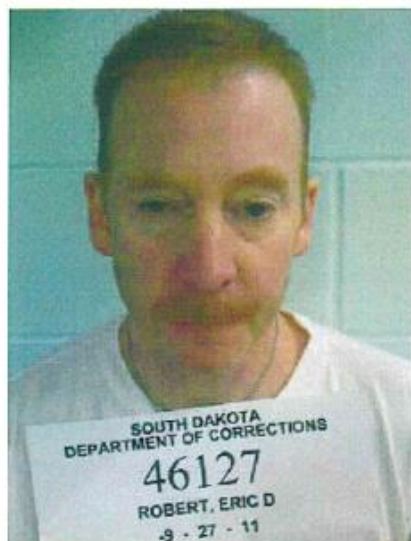
Piper has not changed since his initial incarceration. He remains a remorseless killer and a threat to penitentiary personnel. When Piper visited with psychiatrist Dr. Ulises Pesce, who evaluated and saw Piper approximately thirteen or fourteen times while employed at the penitentiary between 1997 and 2004, Piper was "always irritable

and talking about hurting people if they don't please him." Dr. Pesce observed that Piper harbored extreme anger against penitentiary staff because he felt "that he didn't do anything wrong and that he shouldn't be here" in prison.

Justin Falon saw Piper over a 24-month period when he worked as a mental health counselor at the penitentiary between 2006 and 2008. Piper told Falon he wanted off death row; even more, Piper had "ideas . . . about how to get himself out of prison." Piper "wanted to have a pornography website of some kind . . . that his sister was going to help him set up" so he could "raise the money through the website to get the lawyer" he needed to get himself off death row.

Poage was of no concern to Piper. Falon's counseling notes do not reflect a single occasion where Piper expressed remorse for his victim. Piper talked about himself a great deal, however. Piper considered himself "important" and "a genius." According to Falon, Piper "had a sense of entitlement, grandiosity," he "casts an overly positive light on himself." Piper exhibited "grandiose and antisocial traits of a psychopathic nature." Piper talked of his vision of his future in his sessions with Falon – to get educated, get religion, get off death row, get himself out of prison. Piper "demonstrate[d] narcissistic qualities in that he believe[d] that he will someday be free from charges and living a normal life." Piper told a penitentiary psychologist that "guilt is an emotion he does not feel." Piper "said he had no regret or sense of responsibility for the crime, only irritation with the court and the system." Piper's only "regret is the fact that [he] allowed [himself] to get caught."

ERIC DONALD ROBERT/RODNEY SCOTT BERGET



VICTIM/AGE:

Ronald Johnson – 63

DATE OF CRIME:

April 12, 2011

DATE OF BIRTH:

May 31, 1962 (Robert – Deceased)

May 15, 1962 (Berget)

PRIOR RECORD:

Kidnapping (Robert)

Attempted Murder (Berget)

Attempted Murder (Berget)

Kidnapping (Berget)

Rape (Berget)

CAPITAL CONVICTIONS:

Murder

AGGRAVATING FACTORS:

Murder of Correctional Officer During Escape

POST-CONVICTION:

Sentence Review 2012 (Robert)

Appeal/Sentence Reversed 2012 (Berget)

Resentenced 2013 (Berget)

Second Appeal/Sentence Affirmed 2014 (Berget)

DATE OF EXECUTION:

October 15, 2012 (Robert)/NA (Berget)

Correctional Officer Ron Johnson began working at the South Dakota State Penitentiary in 1987. Johnson reported for duty at the penitentiary on the morning of April 12, 2011. It was his birthday. Johnson would be killed at the hands of inmates Eric Donald Robert and Rodney Scott Berget before his shift ended.

Robert was five years into an 80-year sentence for a 2005 kidnapping in Meade County, South Dakota. Robert was classified as a maximum security risk because of his participation in an escape plot in 2007.

Robert started planning his escape in early March 2011. By April, Robert had “decided on a location, [the] materials that [he] would need to do this, the method [he]

would use, and the time of day that . . . would work out for what [he] was attempting to do." Robert enlisted Berget to help with his escape plan.

Robert and Berget planned to kill a prison guard to facilitate their escape, and prepared accordingly. On the morning of April 12, 2011, around 8:30 a.m., Robert put his plan into motion. Officer Johnson became Robert's target for no other reason than his duty station was within the penitentiary's Pheasant Industries building.

Robert and Berget entered the Pheasant Industries building at approximately 10:30 a.m. Once inside, they attacked Johnson from behind by striking his head with a lead pipe supplied by inmate Michael Nordman. The blow dropped Officer Johnson to his knees.

Johnson tried to protect himself from the attack. The blows continued, causing extensive defensive wounds to Johnson's hands and arms. Johnson dropped to his hands and knees. The blows continued. Johnson collapsed to the floor and still the blows continued. By the time the blows ceased, Johnson suffered 4-5 skull fractures, a broken neck, a partially severed finger, and multiple contusions and skin lacerations due to sustained blunt force trauma.

After Johnson could no longer defend himself, Robert and Berget wrapped plastic pallet wrap tightly around Johnson's face to stop his breathing. Robert then stripped Johnson as he suffocated and donned his uniform and gear. Clothed in Johnson's uniform, Robert headed toward the penitentiary's West Gate sally port pushing a four wheel cart carrying a box that contained Berget.

The sally port is a large, secure vehicle bay between an exterior gate accessed from the street and an interior gate leading into the penitentiary yard. Trucks delivering prison supplies enter the exterior gate, stop, and are security-checked in the bay after the exterior gate is closed. If cleared, the interior gate is opened and the truck proceeds into the penitentiary compound.

At approximately 10:40 a.m., Corporal Matt Freeburg cleared a food truck for entrance into the penitentiary from the sally port. As the interior gate opened, Robert exited the Pheasant Industries building and pushed the cart through the interior gate and into the sally port. Once Robert and Berget entered the sally port bay, staff closed the interior gate. Robert found himself face-to-face with Corporal Freeburg and the escape attempt quickly unraveled.

Correctional Officer Jodi Hall in the West Gate tower became suspicious when Robert did not swipe an identification badge as he entered the sally port. Hall stepped out of the tower to ask Robert why he had failed to swipe an identification badge. Robert replied that he had left his badge at home that day. Hall asked Robert why he had not obtained a temporary badge from Main Control. Robert responded vaguely that he did not follow that procedure.

Hall then asked Robert to identify himself. Robert replied that his name was "Freeburg." Hall found Robert's response "very odd." There was only one Freeburg working at the penitentiary and he was standing right in front of Robert.

While Hall was engaged in calling the Officer in Charge, Freeburg noticed that Robert was not wearing an officer's khaki shirt beneath his jacket and asked why. To Berget, the plot was foiled. He sprang from his box and he and Robert attacked

Freeburg. Freeburg caught hold of Robert but, after Berget struck the back of his head "a couple of times with a radio," Freeburg fell to the ground. Robert and Berget kicked and punched Freeburg.

When Hall turned to view the sally port, she witnessed Robert and Berget kicking and stomping Freeburg as he lay on the ground. She immediately called a "Code Red – Code 3."

Officer Bernard Cramer responded. When he arrived at the West Gate tower he saw Robert and Berget kicking and beating Freeburg. Cramer retrieved an AR-15 assault rifle, positioned himself on the roof overlooking the sally port, and ordered Robert and Berget to stop.

Robert left Berget and Freeburg and climbed the exterior gate up to the razor wire. Robert grabbed the rail at the top of the gate. By then, Cramer had positioned himself on the catwalk over the exterior gate and ordered Robert to "get down." Cramer struck Robert's hands with the butt of his rifle to release Robert's grip on the top rail. Robert hung on and tried to "bait [Cramer] him into pointing his assault rifle at him so that [he] could grab it from [Cramer] . . . to shoot officers." Cramer did not shoot Robert because he feared the bullet might pass through Robert and strike other correctional officers who had arrived to assist.

At this point Robert dropped back down to the ground. He found Berget swinging a radio microphone around by its cord to keep approaching correctional officers at bay. Robert told Berget to stop. Robert and Berget then shook hands and surrendered.

Once the officers subdued Robert and Berget, they realized Robert was wearing Johnson's clothing. A call went out to "lock down" the facility to search for Johnson.

Sergeant Brock Johnson was among the officers searching for Johnson. Brock found Johnson lying on the floor, his face tightly wrapped in plastic. There was "blood everywhere." Brock tore several layers of plastic wrap from Johnson's head. Ron Johnson "was in very bad shape." "His face was swollen. His eyes were swollen shut. He was all purple." Brain tissue was visible through the skull fractures, and bone protruded from a severed finger on Johnson's right hand.

Officer Elizabeth Scharton and other officers attempted CPR on Johnson's swollen face, but had difficulty doing so because of his injuries. Paramedics transported Johnson to the hospital where he died.

An autopsy performed the next day revealed the full extent of Johnson's injuries. The coroner found multiple lacerations and contusions on Johnson's battered body. Laceration is a "tearing of the skin due to blunt force," as distinguished from a "smooth-edged" knife wound. Contusion is bruising.

Johnson suffered multiple, severe lacerations to his scalp, hands and arms. The coroner found a laceration and contusion on the bridge of Johnson's nose. The backs of Johnson's hands and forearms were covered with contusions from trying to protect his head from all the blows. One such blow severed the index finger of Johnson's right hand. Berget delivered another blow to Johnson's head with such force that he broke Johnson's neck. Johnson's skull was fractured in 4-5 places,

exposing underlying brain tissue. Johnson's face was covered in contusions, lacerations, subdural hemorrhaging, and swelling.

Despite the severity of the assault and Johnson's injuries, death was not immediate. Paradoxically, there was no damage to the brain itself. Johnson would have been fully conscious and in agonizing pain from the time the blows started until the time his brain swelled enough to produce unconsciousness. Robert and Berget extinguished whatever slight hope Johnson had of surviving the physical assault when they wrapped his face in plastic. Johnson "died as a result of . . . blunt force injury" to his head and asphyxiation.

At his September 16, 2011, plea hearing, Robert pled guilty to first degree murder in violation of SDCL 22-16-1(1), 22-16-4(1), 22-16-12, and 22-3-3, a Class A felony punishable by death. Robert also waived his right to a jury sentencing. The court found Robert competent to enter his plea based on an evaluation performed by Dr. Manlove. The court also found that Robert was represented by competent counsel. Consequently, the court determined that Robert entered his plea and waived jury sentencing voluntarily, knowingly, and intelligently.

Robert's sentencing trial commenced on October 24, 2011, and lasted four days. The sentencing court heard evidence of aggravating factors, mitigation evidence, victim impact testimony, and Robert's allocution.

The state submitted evidence of five statutory aggravating factors warranting imposition of the death penalty under 23A-27A-1(1), (6), (7), (8) and (9). Robert's prior felony kidnapping conviction qualified as an aggravating factor under SDCL 23A 27A-1(1). Circumstances surrounding the kidnapping hint at the continuing danger Robert posed to society.

In 2005 Robert equipped his pickup truck with "wig-wag" headlight flashers of the type used by law enforcement. In the early morning hours of July 24, 2005, Robert lay in wait as an 18-year-old recent high-school graduate left her job waitressing at a Piedmont bar. Robert followed her car from the parking lot, activated his wig-wags, and pulled her over. Claiming to be an undercover officer investigating illegal drug activity around the bar, Robert asked his victim to step out of her car. She complied. Robert asked to search her trunk. She complied. Robert overpowered his victim and forced her into the trunk of her own car.

Robert drove his truck to a nearby parking lot, then walked back to his victim's vehicle and drove it to the area where his own vehicle was waiting. In his truck, Robert had pornography, rope, a mattress in the bed, a topper with blacked-out windows over the bed, a baseball bat, a pickaxe, and a shovel. Robert's victim foiled his purpose when she called for help on her cell phone while she was locked in the trunk.

Judge Warren Johnson sentenced Robert to 80 years, a *de facto* life sentence. This long sentence angered Robert. Two years after his conviction, he petitioned the court for a sentence reduction. Robert claimed that the kidnapping was not a predicate to sexual assault and murder but was merely a botched robbery. Dr. Manlove evaluated Robert in connection with the petition. Friends and family came to Robert's defense. After a full hearing on the motion, Judge Johnson affirmed the sentence.

Though Robert denied that he intended to rape, murder, and dismember his kidnapping victim, the kidnapping incident was consistent with his history of sexual violence toward women. Robert physically abused at least three women in his relationship history.

Between 1994 and 2001, Robert engaged in a long-term relationship characterized by extreme physical and sexual abuse. The woman testified that “[w]e got along fine at first,” but, in time, the relationship grew violent. She testified that Robert’s violent and assaultive behaviors occurred sometimes without any provocation. On one occasion, Robert punched her in the mouth causing a cut that required stitches to her lip. On another occasion Robert tackled her to the ground so violently she broke her ankle and leg. In another incident Robert held a gun to the woman’s head and told her he could pull the trigger whenever he wanted to. Violence intertwined with Robert’s sexual behavior in the relationship; Robert often prefaced sex with beatings.

Robert also had conduct issues bearing on his death sentence while incarcerated for the kidnapping. In June 2007, prison authorities determined that Robert was involved in an escape attempt. Robert threatened to kill Judge Johnson and plotted to steal a kitchen implement so he could kill a penitentiary staff member.

Robert’s allocutions at his plea sentencing provided further evidence bearing on the appropriateness of a death sentence; Robert’s allocution was indifferently remorseful and defiantly unrepentant. In the presence of Johnson’s widow and family, Robert insensitively characterized Johnson as an “oppressor” whom he needed to “execute” in his personal “war” against his incarceration. While Robert acknowledged the pain he had caused Johnson’s family, he vowed to kill and kill again until he won his “war.” To Robert, penitentiary officers are not “just human beings doing their jobs,” they were his “enemy.” So much so that Robert “regretted not bringing the pipe” to the sally port so he “[c]ould have killed Matthew Freeburg also.” Robert informed the court that he would kill:

[A]nyone that stood in my way between me and freedom. [Judge] Brad Zell, if you stood between the door and me to freedom, I would kill you. If I sat in your chair, I would execute me.

Robert advised the court that “[i]f you sentence me to life, I believe you will read some day that I have killed again.”

Berget pled guilty to first degree murder and waived his right to jury sentencing. The court found Berget competent to enter his plea. The court also found that Berget was represented by competent counsel, that he was mentally competent, and that he entered his plea and waived jury sentencing voluntarily, knowingly, and intelligently.

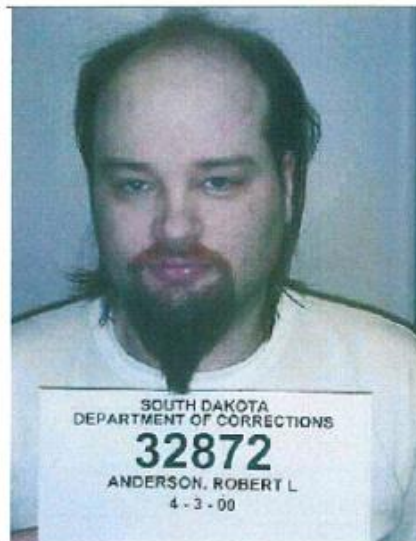
Like Robert, Berget also had a history of extreme violence. In 2003, Berget assaulted his ex-girlfriend. Two days later Berget went to the house where she lived with her new boyfriend. Berget banged on the front door. When the boyfriend came to answer the door, Berget shot him in the chest through the door.

Berget’s ex-girlfriend heard the gunshot and ran to the bedroom to get her own handgun. She grabbed her gun and turned around to find Berget standing in the doorway. The two exchanged fire and in the exchange Berget shot her in the chest.

Believing he had killed them both, Berget drove to a convenience store and kidnapped a 20-year-old female clerk. Berget fled with her in his car and forced her at gunpoint to have sex with him as he drove down the highway at over 90 miles per hour eluding law enforcement. Law enforcement eventually apprehended Berget and freed the clerk.

Based on the aggravating factors, the gravity of Robert's and Berget's crime, the futility of rehabilitating them within the penitentiary walls, the absence of compelling mitigating factors in their favor, and the future threat they posed to correctional staff, the sentencing court found that "the only effective and reasonable retribution or punishment under the totality of circumstances in this matter is the imposition of the death penalty."

ROBERT LEROY ANDERSON



VICTIMS/AGES:	Piper Streyle – 28 Larisa Dumansky – 29
DATES OF CRIMES:	July 29, 1996 (Streyle) August 27, 1994 (Dumansky) December 4, 1969 (Deceased)
DATE OF BIRTH:	NA
PRIOR RECORD:	NA
CAPITAL CONVICTIONS:	Murder, Kidnapping, Rape
AGGRAVATING FACTORS:	Torture, Depravity Of Mind, Killing To Eliminate A Witness, Killing For Money
POST-CONVICTION:	Appeal (Streyle) 2000 Appeal (Dumansky) 2003
DATE OF EXECUTION:	NA

Bill and Larisa Dumansky were married in the Ukraine on August 24, 1986. "[L]ooking for freedom of expression, freedom for practicing our religion," Bill and Larisa moved to Sioux Falls, South Dakota. After six months in the United States (including four months of English lessons), Bill and Larisa both got jobs at John Morrell's working alongside Robert Leroy Anderson.

After about a year, Bill started working at a carpet business in Sioux Falls while Larisa continued working at Morrell's. In order to care for their 10- and 11-year-old children, Larisa worked the night shift at Morrell's while Bill worked his day job.

Three times in the summer of 1994, Larisa found her car had a flat tire at the end of her shift. Larisa would have to call her sleeping husband at 1:00 a.m. to come and change her tire.

On Friday, August 26, 1994, Bill left for work at 8:00 a.m. leaving Larisa at home with the children. At 8:00 p.m. that evening, Larisa, while on her lunch break,

called Bill at home to discuss preparations for weekend company. Larisa, who had had braces removed earlier that day, also remarked, "you wouldn't believe how beautiful I am when you will see me." Bill would never see her again.

After work, at 1:00 a.m., Larisa went to her vehicle and found she had another flat tire. In the dark of night, Anderson and an accomplice, Glenn Walker, were lying in wait for Larisa Dumansky. Walker "grabbed her when she was opening [her car] door." Larisa struggled with Walker until Anderson "put a knife to her and said quit struggling or I'll fucking kill you."

Larisa "quit struggling."

Anderson and Walker then "put her in the trunk of their car." After Walker got scared, Anderson drove him home and "put [Larisa] in the front seat" so he could have a conversation with her. Larisa told Anderson "that she had only been with her husband" and asked "him what he was going to do with her." Anderson replied, "that depends on you." Larisa asked Anderson "not to hurt her," but he would anyway.

He drove Larisa to the middle of a field and raped her "four or five times." According to Anderson, he "did her regular, and then I did her doggy style, and I ate her out for a long time." He said, "when he was raping her at one time she started yelling out some things in Russian . . . he said he thought she liked it." That "just turned him on." Anderson decided "that she was really fine and she had a beautiful body, and he said if he could he would have kept her – he wanted to keep her for a while."

But, Anderson knew he could not "keep her" without getting caught so he "disposed of her that night." Once she "got her clothes back on, he duct-taped her hands and her feet, and he put duct tape over her nose and mouth, and he said she was struggling real bad for a couple of minutes, and then she just quit, and he said he was watching her do that."

Anderson "took Larisa back to Glenn Walker's house because he wanted to make sure Glenn had something more to do with it." Anderson told "Glenn to bury her."

Vance and Piper Streyle first met at Canyon View Bible Seminary in Silverton, Oregon, where both were counselors at the camp. After marrying and living in Oregon for a year, Vance and Piper moved back to South Dakota – to a forty acre parcel of bare ground – to "pursue our hearts desire, and that was ministry."

Vance and Piper "developed pretty much everything that is there to this day, brought water in, electric, telephone, sewer" and a "trailer home." The Streyles also planted trees and "built what we call an outdoor chapel." The outdoor chapel consisted of a ten-foot high wooden cross, three rows of wooden benches and a wooden podium on the hillside. The grounds included two fire pits for campfires. In addition to their regular jobs, the Streyles began to operate Prairie View Bible Camp for one week in the summer starting in 1991.

On July 23 and 24, 1996, a neighbor of Piper Streyle saw Anderson and his vehicle in the area of Streyle's home. On July 25, 1996, at 8:35 a.m., Anderson purchased "one pair of jersey gloves, one 16 ounce spray bottle, one 32 ounce spray bottle, and one polybrush paintbrush at Ace Hardware." That same day, around 1:00

p.m., Anderson told a Ben Franklin store clerk that he wanted to purchase black tempera paint to paint a car as a "prank." Anderson wanted to be certain that the paint would wash off. Anderson was seen at the cash register holding a bottle of black tempera paint. That night, he painted his blue Ford Bronco black.

At 7:30 a.m. on Friday, July 26, 1996, the last day of bible camp for that summer, Anderson drove the black Ford Bronco up to the Streyle trailer. Vance walked out on the porch to greet the stranger, held out his hand, and introduced himself. Apparently surprised to find the man of the house at home at that time, Anderson did not answer right away and then reluctantly shook Vance's hand. "[I]t was a weak handshake," Vance would later observe. Anderson "didn't know what to say" but eventually asked "what do you do here, is this a camp?" Vance said yes and "gave him the sales pitch on the camp."

Vance "asked him if he had any kids, you know, I wanted to know why he was so interested. And he said 'Yes, I do.'" Anderson asked Vance about the religious affiliation of the camp, and was told the camp was non-denominational. Vance told Anderson that if he would like "to give me his name and his address, phone number, and we'll send him a brochure." Piper then gave Vance a piece of paper and a pen, and Anderson wrote down his name and address. Anderson then left.

Anderson said "he knew that he wanted Piper on that day, he knew from then he was going to get her" so "after he was at Streyles, that's when he went and dug up Larisa." Anderson said "that he had dug up Larisa, and in case something came up if Walker led [law enforcement] to the body, it wouldn't be there, and you guys would think he was bullshitting."

Q: What did he do with her?

A: He – it came to the point where he said he dug her up, and he said he thought he grabbed everything, he was grabbing her bones and things and throwing it in a bag, and he said that you guys had found some stuff, but he doesn't think it was enough to do anything. Said it had been there so long that the DNA was no good.

Q: Okay. And what did he do with those bones?

A: He threw them in a bag, he – when he was riding down the road he was jiggling out the teeth and throwing them out the window. And I asked him, I said did you look at the skull? And he said yeah, he said it was really wicked or something to that effect, that I knew that I was with her just not too long ago or just so far back, something around that.

Q: Did he tell you why he pulled out her teeth from the skull?

A: He didn't want dental records to come up.

Q: And what did he do with the teeth?

A: He was just throwing them out the window on the way driving to wherever – to the Sioux River where he said he threw out the body or the bones.

Two days later, on Sunday, July 28, 1996, the Streyle's young son celebrated his second birthday at his grandparent's house. He received a royal blue junior puppet as one of his gifts.

On Monday, July 29, 1996, Vance and Piper Streyle were back to their normal work schedules – Vance from 7:00 a.m. to 4:30-5:30 p.m. and Piper from 3:00 p.m. to 8:00 p.m. at a mental health counseling center. That day, Vance left home at 6:20 a.m. to go to work.

At 8:29 a.m., Anderson gassed his flat black Bronco and drove west of Sioux Falls. At 9:15 a.m., Piper Streyle called her babysitter and said she would bring her kids "at the usual time." Sometime before 10:00 a.m. Anderson "made a U-turn" "[a]bout right in front of the [Streyle] place," parked, and then approached the Streyle trailer carrying a gun.

Anderson "knocked on the door and a little girl answered, he said he asked where her mommy was, she pointed to the hallway, he walked in the hallway and she [Piper] was standing there like she was in shock, and he told her to get on her stomach, she wouldn't, he pushed her on her ass he said, he said that she then told the kids to run and hide." Anderson "handcuffed her . . . hands and her feet." Anderson "started taking her out and she was hopping because of the handcuffs on her feet, so then he put her over his shoulder and took her outside to the truck, he then put her in the truck or she was struggling before he went into the truck, and he shot the gun to have her chill out." "After he fired the gun he put her in the truck, locked the door, then he got in the truck and he took off." Anderson "was slick, because he remembered to have [Piper] get the note" he had left with Vance the day before.

Anderson "took her out somewhere . . . she said she had only been with her husband, that she was on the rag, he said that that doesn't matter, and she asked what are you going to do with me, and he stated that's up to you." Anderson had a particleboard sheet "laid in the back of his truck, he called it his bed board . . . It was just a board that had like two eye bolts in it where you could handcuff – he handcuffed her to each eye bolt by her hands."

"[T]hat's when he had raped her." Anderson raped her "a few times."

When asked if anything besides vaginal rape had occurred, Anderson said "No." He said he "just . . . raped her regularly because she was on the rag." Anderson was "pissed off" during the rape "because she didn't struggle," and "pissed off because the only thing that was nice about her was her legs, and that she had saggy tits and that her body wasn't all that nice."

After Anderson was done raping her, he "straddled over her and looked her in the face and strangled her." Piper was "still cuffed at that time."

Anderson said "he had choked her and everything, he saw that he had lost his watch, and he had looked around his truck and he didn't have his watch there, and so he figured he left it back at the house, so he put her in the front floorboard and put a blanket over her and went back to the house." At 11:50 a.m., a family drove by the Streyle trailer and saw the two Streyle children "in their jamas" and the Streyle dog out by the fence. The "three or four" year old girl "had been crying quite a bit."

At "about noon," the same family drove back by the Streyle's. At that time, the Streyle children were no longer outside. At that time, a dull black Ford Bronco was in the Streyle driveway. A man – 5'10", wearing jeans and a dark T-shirt and a baseball cap, maybe a mustache and a stubble of beard – was walking from the house to the black vehicle.

Inside the Streyle house, Anderson had "found his watch, he looked where the bullet – the gun had went off at that time – when he was struggling with Piper, and he said that he had looked and there was a hole in the tent, and gunpowder, so he then took the tent" "And he said do you want to hear how crazy I am? And I said yeah. And he said I drove right with her through Sioux Falls with her crouched in the passenger side with the blanket over her . . . it's a place where you can just back up in, and I threw her in the water . . . he had taken off her clothes, and dropped her naked . . . you guys [law enforcement] found 'one-half of her shirt . . . that he had thrown out."

At noon and then about 12:20 p.m., Vance Streyle called home and got no answer. At 1:30 p.m. that day, a Lutheran pastor found one-half of Piper's shirt on a road north of Sioux Falls. When Vance Streyle returned home after work that evening his distraught daughter said "Mommy's going to die, she's not coming back."

After July 29, 1996, Vance Streyle never again saw the wife he described as "my best friend, my soul mate, my companion." After resting at home that afternoon, Anderson spent a "very normal evening" with his wife and mother-in-law before he went to work that night.

Streyle's kidnapping was not Anderson's first. Two years earlier, Anderson took a "personal holiday" from work from 11 p.m. on November 10, 1994, until 7 a.m. on November 11, 1994. That day, Anderson had purchased light gray enamel spray paint, starting fluid, two pairs of jersey gloves, and twenty Rayovac AA batteries – enough for two walkie-talkies.

That night, a young married woman, AA, was driving with a friend from Sioux Falls to Parker and back. On the way through Tea, South Dakota, AA drove past a gas station where Anderson and an accomplice in a maroon-colored Monte Carlo were watching the traffic drive by. On the way between Tea and Parker, the maroon Monte Carlo played car tag with AA's vehicle and then raced ahead.

AA soon hit an object in the road. After dropping her friend off at a relative's house near Parker, AA drove back towards Tea. Just before Tea, AA's tire went flat, and she had to pull over by the side of the road. After AA got out of her car and opened her trunk, the maroon Monte Carlo pulled up and stopped. Anderson approached AA. "[He] grabbed me around my waist and pulled me toward the ditch." AA "broke free and ran to the middle of the road, because there was an oncoming car, so I ran towards the car to flag it down." The car stopped and took AA to town. The police had no suspects.

In 1995, Anderson began to spend his days with a friend, Jamie Hammer. Those days consisted of early morning coffee and drives in the countryside west of Sioux Falls. On those drives, "one subject . . . would come up more than most."

Q: And what subject was that?

A: Women.

Q: And in what context would the subject of women come up?
What about women?

A: Grabbing them.

Q: For what purpose?

A: Raping and murdering them.

* * *

Q: Okay. And who would generally bring this topic up for discussion?

A: Bob.

* * *

Q: And would you tell the jury what sort of methods or items would be used to restrain such a person?

A: Rope, duct tape.

* * *

Q: Can you state whether or not you and he ever discussed the use of handcuffs?

A: Yes, we did.

* * *

Q: And would you tell the jury what Mr. Anderson and you discussed in that regard, disposing of the victim?

A: Generally burial, dismembering, disposing of different parts in different areas.

* * *

Q: And what weapons, if any, did you and he discuss?

A: Using a pistol.

Q: And was there any discussion between the two of you about why to use a pistol in particular?

A: Less hassle, make a person more cooperative.

Q: Okay. Did you and he during these winter drives have any discussion about how to kill a victim?

A: Yes, we did.

Q: And can you state whether there was any preference or best method discussed?

A: Best method discussed that I can remember was strangling.

Q: And why was the--did you and he discuss the advantage of strangling? Why strangle?

A: Less chance of leaving evidence behind.

Q: You indicated earlier that you and he discussed handcuffs, have you ever seen him in the possession of handcuffs?

A: Yes, I did.

* * *

Q: And would you tell the jury what was discussed about not leaving fingerprints?

A: Wearing gloves.

On these drive-arounds, Anderson showed Jamie Hammer three or four tire poppers. A tire popper is a metal device with a sharp or beveled edge which, when placed on a road, will flatten a vehicle tire. In addition, Anderson had two walkie-talkies, which allowed him, with Hammer's assistance, to test the range of communication – "about a quarter of a mile" – between the walkie-talkies.

Q: And what purpose was that?

A: For one guy to sit in the ditch with a walkie-talkie and some tire poppers, and the other guy to be in a truck, van, or whatever, down the road, radio when there was a car or whatever when there was a woman driving through so a guy in the ditch could put a tire popper on the road and see if it would work. And, if it worked, then they would radio the guy back in the truck to come up and assist.

Q: Assist in what?

A: Taking them.

Anderson made preparations to carry out the plans he was hatching with Hammer. On July 20, 1995, Anderson bought a 9 mm pistol for \$100.

Anderson later showed the 9 mm pistol to Hammer and Hammer's female neighbor. During these meetings with Hammer's female neighbor, Anderson's favorite topic of conversation was "[r]ather perverted, deviant" sex.

After being called to the Streyle home in the late afternoon of July 29, 1996, law enforcement began collecting evidence. They found that the Streyle trailer was in disarray, a front step was broken, and the royal blue tent was missing. They found a 9 mm shell casing in the Streyle driveway. Piper's three-year-old daughter was hysterically screaming "Mommy's going to die."

She told police "that mommy and a man that she didn't know were yelling at each other in the trailer," "that mommy told her to go get her little brother and go hide," and that "[m]ommy left with the man with black hair in a black truck with black tires." She screamed, "I don't want my mommy to die. I don't want my mommy to die. I don't want my daddy hurt. I don't want my mommy to die."

At about 10:00 p.m. that night, Vance said "it hit me like a ton of bricks." He remembered the stranger who had visited his house the previous Friday morning. "His name was Robert Anderson," Vance told police.

By 1:45 p.m. on July 30, 1996, law enforcement was at Anderson's trailer. Parked in front was a "very clean" 1985 blue Ford Bronco. The officers told Anderson that they were conducting an "investigation" and asked him to come to the Public Safety Building. Anderson agreed without even asking what the investigation was about. Anderson drove himself in his Ford Bronco.

In the interview room, when asked if he knew why they wanted to talk to him, Anderson told investigators that "it's about the missing woman." Unable to recall her name without prompting, Anderson admitted "that he had been at the [Streyle] trailer"

on Friday, July 26, 1996. Eventually, after some denial, Anderson admitted that he, in the same Ford Bronco, had gone the Streyle trailer the day Piper disappeared. After getting no answer to his knock, Anderson claimed he heard a child's voice inside and left. Anderson told investigators that he did not own a handgun or handcuffs.

While Anderson was being interviewed, law enforcement was securing a warrant to search his Ford Bronco. Anderson provided investigators with a key ring "to get access to the vehicle." The key ring contained six keys – keys to the vehicle, keys to a residence, and two handcuff keys. The vehicle search netted: (1) a Menard's bag and Menard's cash register receipt time stamped and dated for 8:13 a.m. on July 29, 1996 for the purchase of duct tape, a three-inch brush, and a five-quart paint bucket; (2) white nylon rope; (3) a Ben Franklin Crafts receipt time stamped and dated 12:59 p.m. on July 25, 1996 for the purchase of craft paint; (4) an Ace Hardware receipt time stamped and dated 8:35 a.m. on July 25, 1996 for the purchase of "gloves, jersey brown, sprayer household, and a paintbrush utility;" (5) a pair of brown, jersey gloves; (6) a Maxon walkie-talkie and ten AA batteries; (7) "a label from a roll of duct tape;" (8) a Menard's Plano toolbox containing primer paint, spray mace, wooden dowels, eye bolts with nuts, a knife, padlocks, connecting links and chain, exacto knives, "nylon tie-down cinch;" (9) "a black baseball-type cap;" (10) rope; (11) a lantern; (12) condoms; (13) a roll of duct tape; and (14) debris (including hair) on a carpeted, plywood platform.

Vegetation found in the Ford Bronco was honeysuckle and black snakeroot found only in undisturbed forest habitat in some stretches along the Big Sioux River. As a result, on September 29, 1996, 150 National Guardsmen searched an area north of Sioux Falls along the Big Sioux River. They found:

- (1) A 12-inch long dildo vibrator;
- (2) One half of a black and white striped T-shirt;
- (3) Gray duct tape;
- (4) Hairs attached to the duct tape; and
- (5) A partially burnt orange candle.

On November 8, 1996, while driving to Minneapolis with a friend, Joel Wudel, a Lutheran pastor, was told by his passenger that law enforcement were seeking a black and white striped garment. Remembering the black and white "rag" that he had picked up off the road north of Sioux Falls and put under the seat of his car, Wudel turned the "rag" in to law enforcement on November 15, 1996. The "rag" was the missing half of Piper Streyle's shirt. Joel Wudel found the "rag" at 1:00 to 1:30 p.m. on July 29, 1996 – the date of Piper Streyle's disappearance (within a mile of the area near the Big Sioux River, where the other half of the T-shirt and duct tape were found.

Anderson's "bed board" and Bronco were transported to the State Crime Laboratory in Pierre, South Dakota. The "bed board" was:

A piece of carpet-like fabric that's over the surface of some particleboard, I think there's a couple of pieces of particleboard that are held together with 2 x 4's. Between the particleboard and the carpet there is a piece of foam carpet cushion . . . And also there are two hoops of circular hasps that are screwed down through the carpet, they're ringed, toward either side of this platform . . . towards the rear window.

On November 20, 1996, a laboratory investigator found a small piece of black and white cotton fabric matching Streyle's shirt on Anderson's "bed board."

Several months later, on May 8, 1997, Anderson was convicted of kidnapping Piper Streyle. Murder charges were held in reserve in the hope that law enforcement would locate Piper Streyle's body.

Three weeks after his kidnapping conviction, on May 30, 1997, at 1:30 p.m., law enforcement searched Anderson's mother's house and found receipts for purchases of items used in the Streyle kidnapping.

Having been convicted of kidnapping Piper Streyle, Anderson was incarcerated in the South Dakota State Penitentiary. Also incarcerated in the South Dakota State Penitentiary was Jeremy Brunner. In order to elevate his status with other inmates, Brunner created a phony rap sheet which falsely stated that Brunner had had a first degree murder charge dismissed. In July of 1997, Anderson and Brunner were incarcerated in adjoining cells.

Anderson and Brunner began to talk frequently. Anderson asked his mother to ask his brother, Lee, about Brunner. The word from Lee was that Brunner "was cool." As they talked, Anderson asked Brunner if he thought he was guilty. Brunner said "Yes, I did." Anderson just smirked and smiled. Anderson and Brunner became cellmates.

At first, Anderson told Brunner "that he was being set up and didn't do it." Once, however, Brunner began to tell Anderson how to beat his murder rap by setting up an innocent person, Anderson began to tell Brunner about evidence that was available to frame someone up for the Dumansky and Streyle murders.

Anderson talked about his crimes "every day, every day besides when we were sleeping, and we didn't sleep too much. I mean once he started to talk about it it's all he wanted to do is talk about it. He would - he just wanted - it was just like he was reliving it, he just wanted to talk about it all the time, talk about the setup all the time." Anderson told Brunner how he'd like "to do" (rape) a particular female penitentiary guard.

Brunner told Anderson that he needed to know the truth in order for Brunner to direct his outside help to stage a proper frame up. After lengthy conversations, Anderson and Brunner agreed that Glenn Walker should be killed. Anderson wanted a photograph of Glenn Walker dead, but Brunner convinced Anderson that a photograph was evidence, and it would be best if Glenn Walker was "bobbing in Lake Michigan."

In order to help Brunner's outside associates find Glenn Walker, Anderson "drew me a map" to "Glenn Walker's mother and father's house in Kansas City, Kansas." In order to procure the physical evidence to frame Walker up before killing him, Anderson drew a map of his mother's house identifying where in her house the physical evidence was hidden. Anderson said there was "a 9 mm gun pistol, the clip to the 9 mm, handcuffs, and right along the ledge above the door there was Larisa Dumansky's necklace and Piper Streyle's ring, intertwined together." At one time, Anderson told Brunner, "I think of myself as a serial killer. And I asked him why. And he said because a serial killer keeps something from each of their victims."

Q: And did he tell you how he got that necklace?

A: He snapped it off her neck.

Q: Okay.

A: He said as a matter of fact he had to get a new chain for it.

Anderson also told Brunner that when he struggled with Piper Streyle, his gun went off. So when he went back to Streyle's for his watch, Anderson saw gunpowder around the hole in the tent and checked the bullet hole in the floor.

Brunner told Anderson that "it was two grand for the hit" on Walker. Brunner and Anderson agreed to a \$500 down payment. On August 27, 1997, at 7:56 a.m., Anderson phoned his mother asking for \$550. On August 26, 1997, eight days after becoming Anderson's cellmate, Jeremy Brunner went to the authorities.

On August 26, 1997, a law enforcement agent went to the Streyle trailer. When the carpet in a bedroom was rolled back, a bullet hole was found in the shag carpet and in the floor of the trailer. Further investigation found a bullet in the dirt beneath the trailer. A search of Ruth Anderson's house that same day netted:

1. A Bryco Arms 9 mm pistol and clip;
2. Two sets of handcuffs; and
3. Larisa Dumansky's necklace tied around Piper Streyle's wedding ring.

Scientific testing at the State Forensic Laboratory indicated the following:

1. At 640 times magnification, photos of black paint on the exterior of Robert Anderson's Ford Bronco and photos of a black paint from a control bottle of black tempera paint from Ben Franklin showed a "very similar composition."
2. Under microscopic examination, there was "no observable differences" between the black paint from the exterior of the Bronco and the black tempera paint purchased at Ben Franklin.
3. The black paint from the exterior of the Bronco and the black tempera paint from Ben Franklin Crafts reacted identically in chemical tests.
4. Inside Robert Anderson's Ford Bronco were several items – a rag, a 32-ounce Ace Hardware spray bottle, an Ace Hardware plastic sack, water bottles, a movie ticket, a Burger King sack, a flashlight, a walkie-talkie – which had a black substance on them which was composed of the same chemical substances as the Ben Franklin black tempera paint.
5. Using Ben Franklin black tempera paint, forensic laboratory officials painted and removed the paint from vehicles similar to Robert Anderson's Ford Bronco in 22 to 25 minutes and 7 to 12 minutes, respectively.
6. Approximately eleven feet of the duct tape had been removed from the roll seized from the Ford Bronco.
7. The end of the duct tape containing numerous human head hairs found in the wooded area near the Big Sioux River physically matched the end of the duct tape found in the Ford Bronco.
8. The two halves of the black and white shirt physically matched.

9. Hair in the Ford Bronco was similar to Piper's hair and dissimilar to Anderson's hair.
10. Hairs on the duct tape found in the wooded area near the Big Sioux River were similar to Piper's hair and dissimilar to Anderson's.
11. A white animal hair found on the brown Jersey gloves was similar to a known hair taken from the Streyle family dog.
12. Fibers found on one half of the black and white shirt were similar to the fibers from the seat cover on the passenger seat of the Ford Bronco.
13. (a) One half of the black and white shirt, (b) the clean half of the black and white shirt, (c) the small piece of cloth found on the "bed board," and (d) the Edgemark folding knife found in Anderson's Bronco, all contained similar black and white cotton fibers.
14. The 9 mm shell casing found on the Streyle driveway was fired by the 9 mm gun taken from Ruth Anderson's house.
15. Anderson's left thumbprint was found on the 9 mm clip found in Ruth Anderson's house.
16. Anderson's left thumbprint was found on the "Walker map."
17. Anderson's left thumbprint was found on the map of Ruth Anderson's basement.
18. DNA tests concluded that neither Anderson nor Piper Streyle could be excluded as donors to the mixed semen and blood stain found near the zipper of Anderson's blue jeans.
19. DNA tests concluded that two hairs taken from the Ford Bronco were consistent "with the types obtained from the DNA from Piper Streyle's menstrual pad."
20. The frequency with which the DNA types that appeared on the two hairs and the menstrual pad would appear in the general population was 1 in 50 million Caucasians.

Twelve days after Anderson's kidnapping conviction, Glenn Walker led law enforcement officers to Larisa Dumansky's gravesite. The location was between the Streyle home and the cabin where Anderson's father had lived near Lake Vermillion. DNA testing matched what bones Anderson had not removed to Dumansky's bloodline.

Anderson was convicted of the murders of Piper Streyle and Larisa Dumansky and sentenced to death. In 2003, just as a decision on the appeal of his convictions was imminent, Anderson carried out his death sentence by his own hand by hanging himself at the South Dakota State Penitentiary with strips of a bed sheet tied to the bars of his cell. The South Dakota Supreme Court affirmed Anderson's convictions posthumously.

JAMES VERNON McVAY



VICTIM/AGE:	Maybelle Schein - 75
DATE OF CRIME:	July 2, 2011
DATE OF BIRTH:	May 9, 1970 (Deceased)
PRIOR RECORD:	Escape
CAPITAL CONVICTION:	Murder
AGGRAVATING FACTORS:	Murder for Pecuniary Gain
DATE OF CONVICTION:	20
POST-CONVICTION:	Appeal/Sentence Review Dismissed 2014
DATE OF EXECUTION:	NA

While housed in a community transition facility in Nebraska, James Vernon McVay heard God tell him to "save the world" by assassinating Vice President Joe Biden. CONFESSION at 13/11, 15/4. McVay walked away from the facility, stole guns from a WalMart and a truck. McVay's plan unraveled when, high on drugs and alcohol, he crashed the stolen truck. CONFESSION at 13/15. He was returned to incarceration.

McVay's plan might seem like the product of insanity, but it was not. It was the product of the persistent drug-induced psychotic state that McVay kept himself in through the easy availability of "DXM," a cold medicine-based PCP analog, in the Nebraska prison system. CONFESSION at 12/16, 13/4.

McVay finished serving his time in Nebraska and was then transported to the South Dakota State Penitentiary to serve the balance of a South Dakota sentence. Because of his escape history, McVay was housed in administrative segregation for the entire 50 days of his South Dakota sentence. CONFESSION at 17/21. From listening to talk radio programs critical of President Barack Obama, McVay decided that "this nigger has got to die, I got to kill this guy. Not Joe Biden, this fucking nigger's gonna die. I'm gonna kill this piece of shit." CONFESSION at 14/15-21. McVay revived his

plan to steal and kill his way to Washington, D.C. to carry out his intentions. CONFESSION at 13/16. McVay decided "I'm gonna kill, and I'm gonna, kill, and I'm gonna kill until I get to this motherfucker." CONFESSION at 14/25.

McVay kept his plans to himself. He worked at "convincing [his] psychologist that [he] was fine" by "participating in programs over there [in which he] pretty much sold [him]self as being, you know, mentally stable and coherent, when all along [his] plan was getting probably a little bit more sadistic and a little bit evil." CONFESSION at 15/17.

McVay considered killing his therapist, who had been "like a family member" to him, because she expressed concern that he might have difficulty detaching from their professional relationship. CONFESSION at 16/9. "[Y]ou stupid fucking c#nt," McVay yelled at her, "I ain't attached to no human being. I'm not attached to God, I'm not attached to nobody so don't put me in that category [of] . . . making me sound like a weak person." CONFESSION at 16/25-17/5. McVay decided to "back off" from killing his therapist because he did not want to "just . . . start killing people in prison." CONFESSION at 17/14. McVay "held out" and convinced his mental health professionals that he was "relatively OK" so he could get released and commence his killing spree. CONFESSION at 17/20.

McVay used his time inside to quietly "plan, and plan, and plan." CONFESSION at 17/24. He devised a plan to enter the "little more wealthy" neighborhoods in Sioux Falls and target the "high and mighty Christians" who lived there. CONFESSION at 18/10. McVay intended to "kill four or five people there in that neighborhood . . . just . . . for the fuck of it, just to let them know, you stupid fucking people" that "you can be touched." CONFESSION at 18/9-24. McVay planned to steal a car and money from one of his victims to "kill [his] way to Washington, D.C." CONFESSION at 18/25, 20/18.

When McVay qualified for release, he was moved to a Sioux Falls community transitions facility. McVay walked away from the facility immediately after morning breakfast and headcount. CONFESSION at 30/11. He stole a child's BMX bike and rode to WalMart for some "WalMart shopping," McVay's euphemism for a brazen form of wholesale shoplifting. CONFESSION at 30/15, 49/25, 52/21. McVay had "quite a bit of hatred built up" inside him so he felt he needed to "release a little anger" by killing someone. CONFESSION at 13/24. McVay went "WalMart shopping" to provision his killing spree.

At WalMart, McVay filled a shopping cart with "all black clothing" and shoes, three hunting knives, a watch, a radio/CD player and CDs and batteries, "DXM" cough medicine, binoculars so he "could watch people from a distance," deodorant, cigarette lighters "in case [he] needed to burn a couple places down," a bandana "in case [he] got cut or something . . . [to] stop the blood flow," energy drinks and some liquor for "liquid courage," and dry food because he "knew [he] was gonna be like hiding out and stuff, ah, you know, overnight in different places." CONFESSION at 31/1-21, 32/6.

McVay stripped down in the middle of the shoe aisle and changed into the black outfit and donned one of the knives. CONFESSION at 30/19, 54/12. McVay told himself that if "somebody [had] trie[d] to stop [him] and they walk up, the killing starts

here. If a manager trie[d] to stop me, [he was going to] kill him, right [t]here on the spot." CONFESSION at 54/17. McVay wheeled his shopping cart into the lawn and garden department, stuffed the remainder of his booty into a black backpack and "walked right past the cashier" out to his stolen bicycle. CONFESSION at 55/23.

From WalMart, McVay biked to an isolated spot beside a nearby Chili's restaurant and mixed himself a cocktail of the energy drink and whiskey and sat there until he "started feeling the effects." CONFESSION at 32/4. McVay rationed his alcohol intake because he decided he was "not gonna do like [he] did on [his] first escape . . . get all blasted and fucking wreck the car. [He was] gonna stay focused this time" because he had people to kill. CONFESSION at 58/17.

After Chili's, McVay walked to a Target store for more "shopping." CONFESSION at 33/10. In the parking lot, he saw an older man with a Corvette. CONFESSION at 61/14. McVay decided he was "gonna get that Corvette" when he was finished "shopping" in Target by "talk[ing the owner] into coming behind the Target . . . and just kill him and throw him in the dumpster." CONFESSION at 61/15. When McVay came out of the Target store, the Corvette owner was not there. CONFESSION at 61/17. Of the Corvette's owner, McVay thought "lucky you, son of a bitch." CONFESSION at 61/17.

After Target, McVay "had a pretty good buzz going" and sought out "a place to roost for the night." CONFESSION at 34/10, 61/25. He located a spot underneath a bridge in a park/golf course to "kick back . . . and get high until morning." CONFESSION at 63/15. McVay "tripped on the DXM and whiskey" and experienced some "bad" psychosis that night. CONFESSION at 34/24, 63/19.

"[T]he voices started again." CONFESSION at 34/25. McVay saw "signs" and "visuals," people who came to him and told him to start killing that night, but he "said, no, it's not time, I have to wait until morning, that's part of the plan." CONFESSION at 35/9. People came to him "to convince [him] that [he] was Native American and [he] needed to kill white people," which he knew "was really weird" and was just "bullshit" stemming from his "succumbing to some psychosis." CONFESSION at 35/14. He "fought it off" and passed out. CONFESSION at 35/18.

When he awoke, "it was quiet and the birds were chirping and the sun was just starting to come up and [he] looked out across the way there and [he] saw the morning star, and [he] went, 'Lucifer.' [He] said . . . [he thought he was] on a mission for Lucifer. [He was] on a mission for the fucking devil." CONFESSION at 19/11, 35/23, 68/16. Still "tripping" from DXM and alcohol, McVay started thinking the he "never was a child of God, [he] was a child of Satan. [He'd] always been a child of Satan" who had come from "the womb of a heroin prostitute" and who had "always had murderous intentions." CONFESSION at 36/7.

McVay had come to the point where he "completely renounced any, any concern for God or people's lives." CONFESSION at 19/12. He was "pretty numb to doing what [he] had to do. To [him] [killing] was just like getting, changing your underwear, and [he] knew [he] was fixing to go kill somebody" as "part of my father's plan. Satan, or Lucifer, or whatever you want to call him." CONFESSION at 36/25, 37/8. McVay "just laughed" to himself at the thought that all his life he believed that he "was being looked after by God, and uh, . . . it's been Satan that's kept [him] from dying from all these drug overdoses and the car accidents and these stabbings and getting shot at

and kidnapped. It's always been, it's been Satan that saved [him], not God." CONFESSION at 37/8. It was not this Satanic epiphany, though, that led McVay to murder. He had "already planned to do what [he] did in prison, so demons or no demons, [he] was doing what [he] was going to do." CONFESSION at 67/21.

From beneath the bridge, McVay followed his drug-induced vision to a "wealthy" part of town to "execute [his] chaos there." CONFESSION at 38/1, 62/4, 68/19. He beseeched his "Father, if you're there, show me the way, show me where I need to go to do this, and, no sooner than I said that, I walked around the corner and, um, saw a fucking garage open [at the bottom about 12 inches] and I went, 'Oh, this is too good to be true.'" CONFESSION at 35/23. McVay "scurried" underneath the overhead door into the garage and into the home of 75-year-old hospice nurse Maybelle Schein. CONFESSION at 39.

Inside the house, Schein's two small dogs were barking. CONFESSION at 40/13. McVay entered the house and looked around. He saw Schein sleeping in a bedroom but he retreated to check the house for any other occupants. In the kitchen, he found Schein's purse and thought that he "didn't have to do what [he] did," he "could have gotten her cash and gone out to the car and looked around for the keys and just left." CONFESSION at 41/14. But, McVay "didn't want to do that, [he] wanted to kill her" so he walked back in the bedroom. CONFESSION at 41/16.

Schein was facing the wall away from McVay, then rolled over and looked up at him. According to McVay:

I guess it didn't, um, compute [with Schein]. And as soon as I guess it started to register, I just reached down and held her and stuck the knife in her throat and ripped across. And blood shot all over the place and then, um she didn't really know what to do, you know, uh, so it was really easy, um she, she realized that she was getting stabbed and, uh, what I was trying to do was, keep, take the struggle out of her as fast as I could, and I knew that by cutting her throat that, you know, blood would stop going to her brain and she'd lose consciousness. But there, after the first or second slash, uh, she, uh, she started fighting, and, uh, that's when she reached up and she grabbed my glasses and, uh, she called me a son of a bitch, and I said, well, I hope your savior can save you now, or something along those lines, and uh, just kind of laughed and pulled the knife out and stuck it in the right side of her throat and ripped across this way and that's when, that's when she bled out. And then she just let go of me and looked at me and dropped her arms and, uh, I uh, I looked down and I watched the, her heart, gush the blood out 'til her heart stopped beating. Made sure she was dead and then, uh, wiped the blade off a little bit and casually walked out.

CONFESSION at 42-44, 75/7. McVay stabbed Schein a total of nine times in the chest, clavicle, neck and face. CONFESSION at 78/1-79/3.

McVay "scratched the dog on the head" as he left the bedroom. He "didn't know there was that much goddamn blood in a human being" so he "walked into the bathroom casually" to clean the blood from himself. CONFESSION at 43/17. McVay cursed his "stupid fucking bitch" victim for getting blood on him and for bending his glasses as she clawed at his face in a futile effort to fend him off. CONFESSION at 43/13, 45/9

After he "butchered" Maybelle Schein, McVay decided that he "wouldn't go from place to place" killing in her neighborhood. CONFESSION at 18/17, 19/15. Instead, he decided to leave in Maybelle Schein's Buick. Though he found \$72 in Schein's purse, he "couldn't find the keys to the car in her purse and [he] was frantically looking through the goddamn purse, and that was the most important thing was getting the goddamn car." CONFESSION at 46/8, 85/3. The objective of killing Schein had been to steal a car without it being reported, "she was just another piece of meat that was in [his] way of getting her car." CONFESSION at 87/11. While he was looking for the keys, the phone rang. McVay thought someone had seen him enter the house and was calling to check on Schein. CONFESSION at 89/19. Agitated and panicked that he "couldn't find the fucking keys," McVay "was getting [so] fucking mad" he was "going to go directly across from there, [he] had already made up [his] mind, kick the fucking door in on the neighbor's and fucking kill all of them and take, take their vehicle if [he] could." CONFESSION at 90/10-21.

McVay ultimately located Schein's keys inside the car itself and left Sioux Falls with a full tank of gas. CONFESSION at 46/22. He found "all this Christian paraphernalia all over the goddamn car and [he] threw all that stupid shit in the backseat, and [he] . . . kinda laughed to [him]self [thinking] . . . if your fucking savior is gonna save you, it'd save you today and apparently he didn't." CONFESSION at 88/11. As he stabbed at her jugular, Schein was "crying out 'Jesus, please help me,'" but McVay had "told her 'Jesus is not going to save you.'" McVay killed Schein to "[s]end a message to the Christian community, I guess your God ain't so holy after all is he? He let me butcher this lady with no problem." CONFESSION at 88/15. All the way through Minnesota, "the car was filling up with the smell of blood." Not realizing that there was "a lot of blood on [his black] shirt," McVay kept wondering "where in the fuck is this blood at, you know? [He] kept smelling it." CONFESSION at 82/16.

The gas in Schein's car took McVay as far as Madison, Wisconsin where he planned "to kill a [police] officer and take his gun." CONFESSION at 19/7, 20/9. He intended to leave his ID with the police officer he killed so that law enforcement could "see who it was, just to kinda aggravate you guys, piss you off, kinda fly in your face." CONFESSION at 32/18.

McVay's plan unraveled in Madison. "[I]nstead of going through with [the] plan that [he] had come up with over the last year and a half, he "let [his] drug addiction get ahold of [him] there." CONFESSION at 19/23, 21/2. "[I]nstead of pulling off and getting rid of the goddamn [OnStar-equipped] car and getting all of my stuff out of it, [he] pulled over and picked up a fucking nigger and got some crack." CONFESSION at 19/23. After "fucking around with this nigger, with this crack pipe," McVay thought about killing him. McVay considered "get[ing] him in the car and get[ing] him behind one of those stores and cut his throat and take his drugs and his money." CONFESSION at 98/25. McVay decided "that would just be wasted, what the fuck do I want to kill this idiot for, he ain't got no fucking money, he had no more drugs, so I told him to get the fuck out of the car. It was his lucky day." CONFESSION at 47/18.

McVay went looking for another victim. He wanted to "get blood on [his] hands." CONFESSION at 20/16. He wanted to kill an "everyday Joe" next, or somebody younger because "the only pleasure [he] got out of killing that lady was the fact that she was a Christian. And she was one of the, uh, she was one of the loved ones and respected ones, probably, of the community." CONFESSION at 20/16, 48/15. Before he could kill again, Wisconsin law enforcement located McVay with the

aid of the OnStar navigation system in Maybelle Schein's Buick and took him into custody. "[I]t was fun while it lasted," McVay said of his murderous rampage. CONFESSION at 106/10.

During his confession, McVay said that he "hop[ed] you guys give me the death sentence" because he did not "give a fuck about living or dying" and meant to kill "again, and again, and again." CONFESSION at 25/23, 29/14. True to his word, McVay threatened a guard who was escorting him in four-point restraints prior to trial. McVay told the guard that he was "lucky I am in restraints, I am waiting for one of you to make a mistake and then that person will be gone. Believe me, one of you will screw up." EXHIBIT 98. Before he could kill anyone else, McVay, like Anderson, carried out his death sentence by his own hand by hanging himself in his cell at the South Dakota State Penitentiary. The South Dakota Supreme Court affirmed McVay's conviction posthumously.